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## Current Topics.

### Foreigners under Italian Law.

IT HARDLY SEEMS credible that, by the terms of a new law, foreigners who cross the Italian frontier will be liable to trial and punishment in respect of statements made elsewhere tending to disparage or misrepresent the present Italian Government. If, however, this really is so, our Foreign Office should make strong and immediate protest against such a breach of the comity of nations. It is, of course, universally recognised that any country, without reason given, can decline to allow any foreigner to cross its borders. That the British Empire claims this right was clearly laid down in *Musgrove v. Chun Teong Toy*, 1891, A.C. 272, and, so claiming, we must concede it to other countries. Indeed, in the case of Tibet, the right is suffered to be exercised with the utmost rigour of the law. Similarly, any country may arbitrarily deport a foreigner without trial: see *R. v. Home Secretary: ex parte Eva Bressler*, 1924, 88 J.P. 89, and cases therein cited. Thus, if Italy finds an Englishman obnoxious to her at her frontiers she can turn him back, or, if he has contrived to pass them, she can expel him. But assuredly she should have no right to punish him for criticism of her political system delivered outside her frontiers, however unfair or even false such criticism may be. Possibly different considerations might prevail in the case of an Italian subject, even if domiciled in England. As an example of jurisdiction claimed over nationals on foreign soil the well-known case of *R. v. Jameson*, 1896, 2 Q.B. 425, may be quoted, in which it was laid down clearly that the defendant, a British subject, helping persons to break the Foreign Enlistment Act from a foreign soil had committed a criminal offence against that statute. If Dr. JAMESON had not been a British subject, however, the utmost our Government could have done would have been to make formal complaint to that of his own nation. English communists and socialists may say hard things about the Italian Government, just as Englishmen of another complexion may denounce that of Russia, but the only remedy in each case (that is, where there is criticism but no conspiracy), is rejection or expulsion from the jurisdiction libelled, and it is an adequate one. We might just as suitably punish Italians here who, in their own country, have delivered an opinion that we should release the Italian war debt. If such

a precedent were generally followed, no newspaper editor could safely venture abroad.

### Nomination of the Sheriffs.

EACH YEAR as 12th November, the morrow of St. Martin, comes round, the Chancellor of the Exchequer, whom we always think of as the high state functionary who imposes, but rarely takes off, the taxes which we have all to bear with what philosophy we can, may be seen, resplendent in his robe of office, occupying a position which to the casual spectator may seem remote from his ordinary duties, but which links him to the long bygone days when he had a close association with the Court of Exchequer and those whom it supervised in the collection of the taxes due to the Crown—the sheriffs. The nomination of those who may be called upon to serve as sheriffs during the coming year, which takes place in the Lord Chief Justice's court, with the Chancellor of the Exchequer in the seat of honour, is one of the few ceremonial functions that lend a little variety to the proceedings of the legal year. Nowadays, save for an occasional plaintive appeal from some country gentleman to be excused from serving on the ground of the expense which he can ill afford, the proceedings are purely formal, the various judges who have itinerated during the last assizes supplying the names of those eligible to fill the office of sheriff. Once, however—in 1844—a curious question arose among the judges on the delicate question of precedence. Sir FREDERICK POLLOCK had been made Chief Baron of the Court of Exchequer earlier in the same year, and, following the usual custom, he proposed to take the place at the right hand of the Chancellor, when suddenly Baron PARKE put in a claim to this position on the ground that he was a Privy Councillor of senior rank to the Chief Baron, and that, in view of that fact, he was entitled to precedence. On this claim being put forward, the Chief Baron abstained from going into court, leaving the point involved to be determined later. Some difference was found to exist on the question, but eventually Lord LYNCHURST and Sir ROBERT PEEL ruled that on this, as on other occasions, the Chief Baron was entitled to precedence in his own court, irrespective of the date of membership of the Privy Council. On the passing of the Court of Exchequer with its Chief Baron and Barons, the Queen's (now the King's) Bench Division became the scene of the annual function, and the Lord Chief Justice now in this matter exercises the duty and enjoys the precedence of the Chief Baron.

### Form of Recognizance entered into by Corporation.

THE ESSENTIALS requisite for a recognizance, when entered into by a corporation, were considered by a Divisional Court, on a preliminary objection taken to a case stated by justices in *Leyton Urban District Council v. Wilkinson*, 70 SOL. J. 1069. There a case had been stated by justices on a question under the Public Health Acts, and it was necessary, by virtue of the provisions of s. 3 of the Summary Jurisdiction Act, 1857, that a recognizance should have been entered into to prosecute the appeal. The form of the recognizance, which was entered into, will be found set out in the report of the case (*ante*, p. 1069), and it will be observed from a perusal of the form in question that it merely purported to bind the clerk to the urban district council, since it was entered into by him, and did not expressly state that it was entered into on behalf of the district council, and since further execution was to be levied, in the event of a breach of the recognizance, on the goods, etc., of the clerk to the council, and not on the goods, etc., of the council. The Divisional Court accordingly held that the recognizance did not satisfy the requirements of the statute, and they accordingly upheld the preliminary objection.

The effect of the authorities which were cited to the court in *Leyton U.D.C. v. Wilkinson*, viz., *R. v. Abergele*, 5 Ad. & E. 795, *Southern Counties Deposit Bank v. Boaler*, 11 T.L.R. 568, *Cortis v. Kent Waterworks*, 7 B. & C. 314, *R. v. Manchester Corporation*, 7 E. & B. 453, would appear to be that there is nothing which prevents a corporation from entering into a recognizance, but that inasmuch as a corporation cannot act except through an agent, the recognizance must be entered into on behalf of the corporation by some person or persons (usually members of the corporation), who are authorised by the corporation to enter into the recognizance; and that where a recognizance is thus entered into on behalf of the corporation, the person actually entering into the recognizance must expressly enter into it on behalf of the corporation, which fact must be clearly stated in the recognizance itself. Furthermore, the recognizance must purport, on the face thereof, to bind the goods, etc., of the corporation on which execution is to be levied in the event of a breach. In *Leyton U.D.C. v. Wilkinson*, it should be observed, the authority of the clerk to the council to enter into the recognizance on behalf of the council appeared as an entry in the minute books of the council, but this the Divisional Court held to be insufficient, as in the opinion of the court it was absolutely essential that the fact that the recognizance was not personal and was being entered into on behalf of the corporation, and the fact that execution was to be levied on the corporation property, in the event of a breach of the recognizance, should clearly appear on the face of the recognizance.

### What is a "Settlement" within the Matrimonial Causes Act?

THE COURT of Appeal have affirmed the decision of the learned President of the Probate Division in the case of *Bosworthick v. Bosworthick*, which has a material bearing on the meaning of "settlement" for the purposes of s. 5 of the Matrimonial Causes Act, 1859, as re-enacted by s. 192 of the Supreme Court of Judicature Act, 1925: *Bosworthick v. Bosworthick*, 1926, W.N. 269. The section in question confers on the court, after a decree for dissolution or nullity has been granted, power to inquire into the existence of ante-nuptial or post-nuptial settlements and to make such orders with reference to the application of the whole or any part of the settled property, for the benefit of the parties to, or the children of, the marriage, as the court thinks fit.

The decision in *Bosworthick v. Bosworthick* is to the effect that the expression "settlement" for the purpose of the above statutory provisions is not to be strictly construed, and that expression may accordingly include instruments which are not strictly settlements in which successive interests are

given, i.e., settlements of property. In *Bosworthick's Case*, the wife, who possessed a life interest in certain settled property, by a bond, secured to her husband an immediate annuity for life, and by a deed poll, executed at a later date, appointed to him a reversionary annuity, expectant on her death, of a certain sum a year. The Court of Appeal, affirming the judgment of the learned President, held that both instruments were post-nuptial settlements, which the court had power to vary by reason of the above-mentioned statutory provisions.

### Deductions in respect of Wear and Tear of Law Books for purposes of Income Tax.

THE QUESTION whether a solicitor is entitled to a deduction under s. 16 of the Finance Act, 1925, in respect of the wear and tear of the law books forming his law library, and the obsolescence of certain of those books, was considered by Mr. Justice ROWLATT, on a case stated by the General Commissioners, in *Daphne v. Shaw (Inspector of Taxes)*, *Times*, 10th inst.

Section 15 of the Finance Act, 1925, provides that:—"Rules 6 and 7 of Cases I and II of Schedule D (which provide, in connexion with the charge to income-tax under that schedule of the profits or gains of a trade, for the allowance of deductions in respect of the wear and tear of machinery and plant, and in respect of expenses incurred in replacing obsolete machinery or plant) shall apply as if references in those Rules to the profits or gains of a trade included references to the profits or gains, whether assessable under Schedule D or otherwise, of a profession, employment, vocation or offices . . . ." It was contended on behalf of the appellant, DAPHNE, that the books, constituting his law library, were to be regarded, for the purposes of his profession, as "machinery or plant," and that accordingly he was entitled to a deduction in respect of wear and tear, and also in respect of obsolescence.

Although, figuratively speaking, and in the language of poets and novelists, the law library of a lawyer may be described as the "machinery and plant" of his profession, it would require an exceedingly wide stretch of imagination to hold that such books were included and were intended to be included in the expression "machinery and plant," as used in s. 16 of the Finance Act, 1925.

Some light as to the meaning of the expression "plant," as used in income-tax Acts, is to be found in the judgment of ROWLATT, J., in *Earl of Derby v. Aylmer*, 1915, 3 K.B. 374, in which case it was held that the owner of a stud farm was not entitled to a deduction, under s. 12 of the Customs and Inland Revenue Act, 1878, in respect of the annual decrease in value of a stallion. In his judgment (*ib.*, at pp. 379, 380), ROWLATT, J., said: "The section (i.e., s. 12, *supra*) is obviously applicable to anything like machinery which is being worn out by use, and which but for use would remain undiminished in value, apart from the access to it of deleterious influences, such as rust or anything of that kind, and apart from changes in fashion . . . In considering the application of the word 'plant' one must bear in mind that it must be plant which has a diminished value after a year by reason of wear and tear during the year . . . The diminished value of an animal or a tree, by reason of the effluxion of time, is not diminished value by reason of wear and tear; it is simply diminished value because money has been invested in a wasting source of production." If one applies this test to the books of a lawyer, it is difficult to see how the books can be regarded as "plant." On the other hand, no one will deny that the depreciation that might take place annually in a law library might be considerable, and that some allowance or deduction therefore should be permitted. In order to bring about this desired result, however, the amending of the present income-tax legislation is necessary. As the law at present stands, it is conceived that it will apply, for example, to machinery installed by a patent lawyer for the purposes of his practice. In such a case, a deduction might successfully be claimed for wear and tear and obsolescence.

## The Courts of Scotland.

Continued from page 1079.

### THE INTERIOR COURTS.

Practically the only court of civil jurisdiction in Scotland to be noticed under this head is the Sheriff Court. In certain small matters the District Justice of Peace Courts (somewhat like petty sessions in England) and Burgh Police Courts have a limited civil jurisdiction, but these are matters in which litigants usually appear in person. It is the Sheriff Court that most nearly touches the life of the community and upon it falls what might be termed the administrative life of the country. The court has an ancient origin. At inception it seems to have had many things in common with the Sheriff's Court in England, and down to the time of the Jacobite Rebellion in 1745 its jurisdiction was heritable. The jurisdiction of the court to-day, however, is largely the creation of statute, and the judges salaried servants of the Crown. The court is presided over by a Sheriff Principal, who (except in certain statutory matters) practically sits only as a judge of appeal. He is usually a practising King's Counsel at the Scots Bar, but in the case of the Sheriffdoms of Lanarkshire and the Lothians and Peebles the office is a full time appointment. Each Sheriffdom is divided into certain court districts, presided over by one or more Sheriff's Substitute. In the Glasgow district there are six. Appointment to the office of salaried Sheriff Substitute is limited to advocates and solicitors of five years' standing. The Crown makes the appointment on the recommendation of the Secretary for Scotland, but the Sheriff Principal may grant a commission to any suitable person to act as Honorary Sheriff Substitute during the continuance of the Principal's own commission. Practice in the Sheriff Court is almost confined to solicitors, except at Edinburgh, where counsel are more readily available. Local bars of advocates in the large provincial towns do not exist as in England, so that the practice in the Sheriff Court has operated against the employment of counsel. The court exercises three distinct civil jurisdictions: (1) Ordinary, (2) Summary, and (3) Small Debt. It is usual and convenient to refer to the Sheriff Substitute as the "Sheriff" and add "Principal" when that judge is meant, and that mode of reference is adopted throughout this article.

### THE ORDINARY JURISDICTION.

The ordinary jurisdiction of the Sheriff is no inconsiderable rival to that of the Court of Session. Broadly speaking, he has a concurrent jurisdiction with that court in almost any action, except those involving personal status of a declaratory nature, and such actions as by statute are alone competent to the Court of Session, and that irrespective of amount. As the actions which are alone competent in the Supreme Court are limited in number and payment of fees to counsel not readily sanctioned in the Sheriff Court, it will be gathered that the latter court is more generally favoured for litigation. Provision exists however in certain classes of action where the amount involved exceeds the capital value of £1,000, that either party may have the cause removed at a certain stage of the suit for trial in the Court of Session. In other cases if the cause is one which if commenced in the Court of Session would have been tried by jury, the cause may be removed for such trial at the request of either party. In general the jurisdiction of the Sheriff in regard to defenders follows within the district of his court the same rules as apply to the Court of Session in respect of the whole of Scotland. Provision is made in the case of a plurality of defenders to have the case transferred from one court to another, and more convenient one, and the same rule may be exercised where the action has been inadvertently brought in the wrong court.

### THE COMMENCEMENT OF PROCEEDINGS.

It may be stated generally that in substance the procedure in the Sheriff Court under the ordinary jurisdiction of the

Sheriff follows closely the procedure in an ordinary action in the Court of Session. There are certain differences of forms and in nomenclature, however, that should be noticed. Proceedings, except in certain forms of process, for which special provision is made, are commenced by writ. The writ comprises (1) the Instance; this sets forth the names and designations of pursuer and defender; (2) the Crave; this sets out the specific decree, warrant or order that the pursuer seeks from the court. It is signed by the pursuer or his solicitor, who must be a solicitor enrolled in that particular sheriffdom. Any duly admitted solicitor may be so enrolled on paying the fee of five shillings and signing the Rolls of Court; (3) the Condescendence; and (4) the Pleas in Law. These last have been fully described before in dealing with Court of Session procedure.

### SERVICE.

The writ is now taken to the office of the Sheriff Clerk of the court in which the action is to be tried. A fee of ten shillings is paid and a "first deliverance" endorsed on the writ. This is a warrant signed by the Sheriff or the Sheriff Clerk authorising service of the writ on the defender and appointing him, if he intends to defend, to lodge a notice of appearance with the Sheriff Clerk within the *inducere*. The *inducere* is generally seven days, but on cause shown the Sheriff may shorten the period to not less than forty-eight hours. The writ is then served on the defender by a Sheriff Officer handing him a copy with citation subjoined or by a solicitor of the court sending the defender a copy with citation in a registered letter.

### APPEARANCE TO DEFENCE.

If the defender, by himself or his solicitor, fails to lodge a notice of appearance within the *inducere*, the pursuer's solicitor endorses a minute on the writ asking for decree in terms of the crave, with expenses. A note of the expenses is endorsed on the writ and certified by the auditor of the court. Decree is granted in course. Such a decree in absence may be extracted seven days after the Sheriff has pronounced judgment, and may then be followed by the usual modes of execution. If the defender has negligently or from some other explained cause allowed decree to pass in absence against him, he may prevent execution issuing thereon by lodging a reponing note. At the same time he must lodge in the hands of the Sheriff Clerk the sum of £2. The reponing note sets out the reason of the defender's failure to appear in the first instance and is intimated to the pursuer. If the Sheriff is satisfied with the reasons given he recalls the decree and the case proceeds as a defended cause in the normal manner. Whether the decree is recalled or not, the pursuer gets the consigned money. Where appearance has been timeously entered the case is enrolled for the first court day occurring after the expiry of the *inducere*. This in a busy centre like Glasgow means the succeeding day, as there the court sits daily. When the case calls in court the pursuer's solicitor appears and "tables" the action. Tabling is a mere formal appearance (covered by the instruction fee), but if the case is not tabled the defender may crave protestation and the case drop. As previously explained in regard to the procedure in the Supreme Court this difficulty can usually be got over by payment of protestation money.

### DEFENCE TO TRIAL.

Within six days of tabling the defender must lodge his defence in the form of articulate answers to the articles of pursuer's condescendence. Subjoined to his defences he must have his pleas in law. Within four days of the last day for lodging defences the case is put out on the Adjustment Roll. Parties meantime exchange any adjustments they may desire to make on their pleadings. It seldom happens that this can be satisfactorily done within the four days so that it is usual for the case to be continued on the Adjustment Roll for a week or a fortnight. When the parties have adjusted their pleadings the Sheriff closes the record. At the same time, if there are preliminary pleas to be disposed of he sends the case to the

Debate Roll (corresponding to the Procedure Roll in the Court of Session), and if there are no such pleas, or if the Sheriff thinks that they should be reserved for consideration after proof, he will fix a diet of trial, and direct the mode of proof to be allowed. It should be explained that the word "Proof" is commonly used by Scots pleaders where their English colleagues would use the word "trial." "Proof as used in England to denote the statement of a witness's evidence is called, in Scotland, "Precognition." In Scotland the word "trial" is generally used only in connexion with trials by jury and criminal trials. When the record is closed each party must, if required, lodge in process any documents founded on in his pleadings, and within six days, the pursuer must lodge in process a certified copy of the record made up in the same form as the closed record in a Court of Session process, except that it is not printed. In the Sheriff Court, trial by jury is only allowed in one form of action, viz.:—Actions for recovery of damages under the Employers' Liability Act, 1880. Since the passing of the Workmen's Compensation Acts, this class of action is rarely resorted to so that civil trials by jury are seldom seen in the Sheriff Court. It is always competent, of course, where the case is one, which, had it been raised in the Court of Session, would have been appropriate for trial by jury in that court, and the sum involved is over £50, to have it removed for trial in that manner on the motion of one of the parties to the action at the closing of the record. In general trials before a Sheriff, follow the same course as trials before a Lord Ordinary sitting without a jury. Incidental procedure is dealt with on the Sheriff's Motion Roll, and the process of recovery of documents by either party under a commission is available. The evidence is usually taken down in shorthand, and when extended and certified, it becomes the record of oral evidence.

#### JUDGMENT AND EXTRACT.

The Sheriff's judgment takes the form of an interlocutor, in which he sets forth separately his findings in fact and in law. He also appends a note in which he sets forth the grounds on which he has proceeded. As in the Court of Session, the judgment must be extracted before execution may issue. In summary causes decree may be extracted after the lapse of seven days from judgment, and in ordinary causes after the lapse of fourteen days, but on special cause shown, the Sheriff may allow extract to issue earlier. The same forms of execution are available to the judgment creditor under the Sheriff Court Decree, as under a Court of Session Decree, but in the former case the execution is carried out by officers of the Court, called Sheriff Officers.

(To be continued.)

## Amendments as to Income Tax under Finance Act, 1926.

THE Finance Act, 1926, contains some important amendments of income tax law, which it may be as well to examine. The material provisions are to be found in Pts. III and IV of the Act, 1926, Pt. V dealing with Excess Profits Duty.

No change is made in the rates of income tax or super-tax, or in the determination of the annual value (s. 19).

An alteration is made by s. 20 in the procedure hitherto prevailing in respect of claims made by non-residents for allowances, deductions, reductions of rate or reliefs, in the cases provided for by s. 24 of the Finance Act, 1920. The procedure in respect of such claims is now brought into line with the procedure applicable to claims for exemption in respect of income by charities and claims for repayment of tax in respect of interest paid to banks, discount houses, etc., the procedure to be followed in the two latter cases being indicated by s. 19 of the Finance Act, 1925. There is one slight difference, however, that should be noted. In the case of claims for deductions, etc., by non-residents, the time for appealing from

an adverse decision of the Inland Revenue Commissioners to the Special Commissioners is extended to three months (instead of twenty-one days).

Section 21 of the Act of 1926 makes the provisions of s. 18 of the Finance Act, 1925, permanent. Weekly wage earners employed by way of manual labour, as distinguished from persons employed as clerks, typists, draftsmen or in similar capacities, are charged under Sched. E upon the actual amount of their wages for each quarter (Finance Act, 1922, s. 18 (1), (2); r. 2 of the Rules applicable to Cases I and II of the Income Tax Act, 1918). Previously to the Finance Act, 1925, the assessment of such weekly wage earners was made quarterly, but s. 18 of the Finance Act, 1925, provided that the assessment should be made half-yearly instead for the year 1925-1926. This provision has now been made permanent by s. 21 of the Finance Act, 1926.

The celebrated case of *Whelan v. Henning*, 1926, A.C. 293, affirmed the principle that there could be no liability for payment of income tax where it was shown that there were no profits in the year of assessment, notwithstanding that profits had been received at some time during the years of average. This rule is now abrogated by s. 22 of the Finance Act, 1926. In such cases the taxpayer will be taxable on the profits, gain or income of the period that may be prescribed, previous to the year of assessment, nor will he or his executors or administrators be entitled to any amendment of the assessment under r. 3 (1) of the Miscellaneous Rules applicable to Sched. D, unless it is proved that he ceased to possess the source of the profits or gains or income on the property, at some time within the year of assessment. It is submitted, however, that s. 22 of the Finance Act, 1926, has no application where it is shown that there was no source of income in existence at any time during the year of assessment, and in such a case it is submitted there can clearly be no liability to tax. It should be observed, however, that s. 18 is expressly stated (in s.s. (2)) to have deemed always to have had effect in relation (*inter alia*) to profits or gains falling within Cases I, II or VI of Sched. D. This sub-section, which is retrospective, therefore seems to be more limited in its application than s.s. (1), but it is submitted that s. 22 (1) equally applies to, *inter alia*, Case III of Sched. D, and that *Brown v. National Provident Institution*, 1921, 2 A.C. 222, and *Grainger v. Maxwell*, 1926, 1 K.B. 430, are equally overruled.

Previously to the 1926 Act there was no provision which required a notice of appeal to state the ground of appeal, though in practice it was not unusual to do so. Section 25 (1) now requires the grounds to be stated in any notice of appeal against an assessment under Sched. D. The appellant will not be allowed to go beyond the grounds of appeal stated in the notice, except where the Commissioners are of opinion that the omission was not wilful or unreasonable. Where the hearing of any such appeal has either been postponed or adjourned beyond the time limited for the hearing of such appeal the General Commissioners must proceed to allow and confirm such part of the assessment as appears to the General Commissioners not to be in dispute, whereupon the tax in respect of such amount shall be collected and paid, any balance that might be found outstanding or overpaid on the determination of the appeal being respectively payable or repayable on such determination (s. 25 (2)).

Section 26 of the Finance Act, 1926, appears to be aimed at the decision in *North London, etc., Property Co., Ltd. v. Moy*, 1918, 2 K.B. 439, in which case it was held that the tenant was under no obligation to produce the receipt of payment of tax under Sched. A to his landlord on making a deduction from the rent. Now, apparently, he is to be allowed the deduction on payment of the residue of the rent, provided he produces the receipt.

Section 24 of the Finance Act, 1923, provided that applications for relief in cases where an excessive return had been made by reason of some error or mistake by the applicant in

the return or statement for the purpose of assessment under Sched. D were to be made not later than three years after the end of the year of assessment within which the assessment was made. The time has now been extended by s. 27 of the Finance Act, 1926, to six years, though the extension of time will only apply to assessments made after the 5th April, 1923.

#### TRANSFER OF CERTAIN PROPERTY FROM SCHED. A TO SCHED. E.

By virtue of s. 28 and the Third Schedule of the Finance Act, 1926, certain property which was hitherto chargeable under Sched. A, is henceforth to become chargeable under Sched. D, with certain modifications. The property thus affected is firstly, property to which No. II of the Rules applicable to Sched. A hitherto applied (e.g., tithes, manors and other royalties, dues in right of the church, fines in consideration of a demise), which will henceforth be chargeable under Case III of Sched. D, although in computing the amount of the assessment under Sched. D, the like deductions and allowances are to be made as would have been made if the assessment were in fact being made under Sched. A, No. II. [For these deductions and allowances, cf., No. V, and No. VIII of the Rules applicable to Sched. A.] Furthermore, with regard to fines in consideration of a demise, the proviso to r. 6 of No. II of the Rules applicable to Sched. A is unaffected.

The second class of property which is thus transferred by s. 28 of the Finance Act, 1926 is property, to which the Rules of No. III of Sched. A, apply e.g., quarries, mines, ironworks, gasworks and other trading concerns, in respect of which it is difficult to separate the profit derived from the use of the land from the profit derived from the mercantile undertaking carried on by means of the land or its produce (*cf. Harris v. Edinburgh Corporation*, 5 Tax Ca. 271). Such property is henceforth to be charged under Case I of Sched. D. Rules 4, 5 and 7 of Sched. A, No. III, however still apply. Rule 4 deals with the persons who are chargeable; Rule 5 provides for the assessment on the value of the profits without deduction whatsoever, in respect of the distribution of any share or dividend or in respect of the payment of claims on the profits to any creditor; while s. 7 provides for the case of adventurers miners, allowing each adventurer to have a separate assessment, if he desires, and to set off against his rights in respect of one or more mines, his losses in respect of any other. Furthermore, in estimating the profits on account of or by reference of to the annual value of any lands, tenements, hereditaments or heritages occupied and used in connexion with any of these trading concerns, and not separately assessed and charged under Sched. A, no deduction or set off is to be allowed with the exception of the deduction granted by s. 18 (2) of the Finance Act, 1919, which allows a deduction of one-sixth of the annual value of any mills, factories or similar premises owned by the person carrying on the trading concerns, and occupied by him for the purposes of such concerns.

According to the provisos to s. 28 of the Finance Act, 1926, the relief given to charities, friendly societies and other bodies by ss. 37, 38 and 39 of the Income Tax Act, 1918 and s. 30 of the Finance Act, 1921, in respect of property tax under Sched. A, is in no way affected by the transfer to Sched. D of the property hitherto chargeable under Sched. A, and as far as such relief is concerned, the property in question is to be deemed as if it were still chargeable under Sched. A.

#### ABOLITION OF THREE YEARS AVERAGE.

Section 29 of the Act with one fell swoop, abolishes the three years' average applicable to Sched. D, and in all such cases coming within Sched. D in which hitherto the tax was computed on this basis the assessment will in future be on the full amount of the profits, gains or income of the year preceding the year of assessment. The cases which are thus affected are Case I (trades not contained in any of the Schedules); Case II (professions, employments or vocations not contained in any of the Schedules), Case V (stocks, shares, rents and possessions,

outside the United Kingdom). Hitherto the assessment under Case IV, was made on the income arising during the year of assessment, but it will now be made in the same way as under Cases I, II and V, but on the income arising in the year preceding the year of assessment. It should be noted that Case VI (annual profits or gains not falling under any of the other Cases) is also affected by s. 29 of the Finance Act, 1926. By r. 2 of the Rules applicable to Case VI, the assessment might be made on an average, greater or less than a year. Now, although it was made on an average of less, it cannot be made on an average of more, than one year.

Proviso (b) to s. 29 (1) contains some special provisions with regard to income falling within Case IV or Case V, which modify the general rule laid down in s-s. (1) of s. 29. Where the income is first received in the year of assessment, the tax will be calculated on the full amount of the income arising within that year; where it has been first received on some day (other than the 6th April) in the year preceding the year of assessment, it will be computed on the income of the year of assessment; where it has been first received on the 6th April in the year preceding the year of assessment, or on some day other than the 6th April in the year next before the year preceding the year of assessment, tax may, at the option of the taxpayer and on his giving notice to that effect to the surveyor within twelve months after the end of the year of assessment, be charged on the income of the year of assessment, and in that event, if tax has already been paid, any over-payments will be repaid.

Any hardship which might be inflicted by the abolition of the three years' average rule is mitigated by proviso (a) to s. 29 (1), which entitles the taxpayer to be charged on the amount of the profits or gains of the year of assessment, on giving notice to that effect to the surveyor within twelve months after the end of the year of assessment. Relief to a certain extent is further given by s-s. (3) of s. 29, which permits a person to be taxed in certain circumstances, but only for the years 1927-28, and 1928-29, as he would have been taxed but for the new provisions which practically means on a three years' average. The conditions which must be fulfilled before this relief will be given are as follows: (a) Tax must have been assessed and charged under Sched. D for the year 1926-1927 upon an average of three years or more; (b) The income, etc., of either of the first two of the three years upon the average of which tax would have been paid but for the new provisions, for 1927-1928, must be less than the income, etc., for one year calculated upon an average, of the six years preceding those three years, or, if the taxpayer in question is shown to have not been in possession of the source of the income, etc., during these six years, upon an average of such lesser period, preceding the said three years, during which he may have been in possession of such source; (c) Notice in writing must be given to the surveyor not later than the 5th October, 1927, of the election to be so charged.

#### COMPOSITE ASSESSMENTS.

Income consisting of interest or annuities or other annual payments (r. 1 of the rules applicable to Case III of Sched. D), or arising from foreign securities (Case IV) or from foreign stocks, shares, rents or other possessions (Case V), may, by s. 30 of the Finance Act, 1926, be assessed and charged in one sum, but provision is made for the separate assessment of profits or income, of which the source or any part of the source has ceased in the year of assessment (proviso (i) to s. 30 of the Finance Act, 1926). There are similar provisions where there has been a new source, or an addition to an already existing source, of income, during the year of assessment (proviso (ii) to s. 30); in these cases if the income is chargeable under r. 1 of Case III of Sched. D. (interest, etc.), the provisions of para. (1) of r. 2 (of Case III) will apply, and if it is chargeable under Case IV or Case V of Sched. D. (foreign securities, possessions, etc.), the provisions of s. 29 (1) (b) of the Finance Act, 1926 (noted above), will apply.

## DISCONTINUANCE OF TRADE.

Where a profession or vocation is permanently discontinued during any year of assessment, tax must be paid, subject to certain deductions or reliefs, on the profits or gains from the 6th April in that year down to the date of the discontinuance, and if the assessment has already been made and tax paid, any over-payments may be recovered, or on the other hand, any additional assessment may be made, as the circumstances require (s. 31 (1) (a)). Where, however, the profits or gains of the year ending on the 5th April in the year preceding the year of assessment in which the discontinuance occurs exceeds the amount on which the person has been charged for such preceding year, an additional assessment, subject to the usual deductions and reliefs, may be made (s. 31 (1) (h)).

## RELIEFS IN RESPECT OF CERTAIN LOSSES.

Where a loss in any trade, profession or vocation, whether carried on solely or in partnership, has been suffered, in respect of which relief has not wholly been given under s. 34 of the Income Tax Act, 1918, or under r. 13 of the Rules applicable to Cases I and II of Sched. D, any portion of the loss may be carried forward and deducted from or set off against the profits or gains of such trade, profession or vocation, for the six following years of assessment (s. 33 (1)): where, however, the relief cannot be given within the six following years (because, e.g., of the smallness of the profits), the period may be extended (s. 33 (3)).

## CONCLUSION.

Owing to considerations of space, it has been impracticable to deal with all the income-tax amendments contained in the Finance Act, 1926, but those which appear to be of the most importance have been selected and dealt with in the above columns.

## A Conveyancer's Diary.

Before 1926 the task of preparing a settlement of the whole or substantially the whole of a settlor's property was a matter of some delicacy, for there was risk of the settlement being void as against creditors, under the statute 13 Eliz., c. 5. That statute, however, saved conveyances made in good faith and "for good consideration" (a phrase which was always construed to mean "for valuable consideration") to a person not having, at the time of conveyance, notice or knowledge of an intention to defraud creditors. In order to take advantage of this provision, it was expedient for the intended beneficiaries or some of them to bring some additional property into settlement, or to take over some liability, by way of providing the "valuable" consideration. This expediency arose even in case of a family arrangement entered into in good faith, as in *Re Johnson*, 1881, 20 Ch. D. 389, affirmed 51 L.J., Ch. 503, where the objects of the settlor's bounty, his daughters, took over certain of his debts.

The new legislation has to some extent simplified the task of the legal adviser in these cases. Section 172 of the L.P.A., 1925, in re-enacting the provisions of 13 Eliz., c. 5, in shorter language, has introduced a modification and extension of the saving clause; for by s-s. (3) the section does not extend to any estate or interest in property conveyed "for valuable consideration and in good faith or upon good consideration and in good faith" to a person not having at the time of the conveyance notice of the intent to defraud creditors.

"Good consideration" in this sub-section must no doubt be construed in its modern sense, referring to the natural love and affection of members of a family. A post-nuptial settlement, though not made pursuant to any ante-nuptial agreement, may thus be protected under the new law; and the family legal adviser need not be so anxious that the wife should bring property into settlement or otherwise provide some valuable consideration. The necessity of

good faith and want of notice on the part of the beneficiaries remains, and does not constitute any problem of conveyancing.

The amendment is one against creditors; but if a creditor is aggrieved by such a transaction as supposed, there are still available remedies by bankruptcy proceedings under the Bankruptcy Act, 1914, s. 42.

Before 1926 an executor could assent to a legacy in favour of himself. After 1897 and before 1926 an executor could also assent to a devise of land in favour of himself. In such a case the assent was not a conveyance, and no rule of law forbidding conveyances by a person to himself operated to prevent such an assent. In case of intestacy after 1897, an heir who was also administrator could convey freeholds descended to him to a grantee to the use of himself in fee simple: an executor could adopt the same device as respects freeholds devised to him, though at unnecessary costs, for an assent was available. After 1925 an assent is available to either an executor or an administrator; such an assent, though now becoming a mode of conveyance, is authorised by s. 36 of the A.E.A., 1925, and s. 72 (3) of the L.P.A., 1925. If a legal estate is concerned, the assent must be in writing: A.E.A., 1925, s. 36 (3). Further, if the land is devised to the personal representative as tenant for life, and the will contains no express appointment of Settled Land Act trustees, so that the personal representative himself fills that position under S.L.A., 1925, s. 30 (3), an appointment of an additional trustee under that sub-section may be necessary before the assent is made.

## Landlord and Tenant Notebook.

Nearly a year ago we had occasion to deal briefly with the effect of the L.P.A., 1925, on the law of landlord and tenant. The L.P. (Amend.) A., 1926, contains an important provision affecting this branch of the law, and it may be as well to call attention to and to examine its provisions. Before doing so, however, it may be as well to say a word or two about the apportionment of conditions and right of re-entry on a severance of the reversionary estate.

The old common law rule was that a right of re-entry for condition broken could neither be reserved in favour of nor assigned to a third person, so that where a lessor granted his reversionary interest to a third person, the latter could not take advantage of the condition. The law was altered in this respect by an Act of 1540 (32 Hen. 8, c. 34), the Covenants Act, which entitled the grantee of the reversion to take advantage of such conditions. As rights of re-entry could not be assigned, so also could they not be severed, at common law, and if a lessor severed his reversionary interest, both he and his grantee were at common law debarred from taking the benefit of the condition. Section 3 of the L.P. (Amend.) A., 1859, permitted such a severance to be effected without thereby destroying the right of re-entry, but this provision only applied to the right of re-entry for non-payment of rent, and it was further necessary that the entire rent should have been legally apportioned. The Conveyancing Act, 1881, s. 12, extended this right, where the lease was made after the 31st December, 1881, to all rights of re-entry, whether or not for non-payment of rent. This last statutory provision will be found re-enacted in sub-s. (1) of s. 140 of the L.P.A., 1925, which is as follows: "Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain

## Section 2 of the Law of Property (Amendment) Act, 1926.

annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease."

Prior to the alteration of the law by sub-s. (2) of s. 140 of the L.P.A., a "right of re-entry" would not, of course, include a "right to determine the lease by notice to quit or otherwise," for the purpose of the statutory provisions relating to the passing of rights of re-entry to the grantee of severed reversionary estates. On this point reference may be made to *In re Bebington's Tenancy: Bebington v. Wildman*, 121, 1 Ch. 559. There a farm, together with certain lands, were let to Bebington, and by the terms of the agreement the tenancy was terminated by twelve calendar months' notice, the notice to terminate as to the lands on 2nd February, and as to the farm on 1st May, in any year. The property in question was put up for sale by auction by the landlord, and was sold in two lots. The rent was apportioned by agreement between the purchasers, but the plaintiff did nothing to recognise the division of the tenancy. On 22nd January, 1920, the purchaser of one of the lots gave the tenant notice to quit the portion of the property sold to him, and this notice required the tenant to give up possession, as to the land on the 2nd February, 1921, and as to the house and buildings on the 1st May, 1921. On the 31st January, 1920, the purchaser of the other lot gave the tenant a similar notice as to the portion of the property sold to him. It is clear that each of these notices, taken by itself, was not a good notice, but it was argued that the one should be taken in conjunction with the other, and that then the notices were good. Peterson, J., however, declined to accept this contention. In his judgment the learned judge said (*ib.*, at pp. 504, 565): "It appears to me, therefore, that if a notice to quit is not such an one as may properly be given, the notice is void *ab initio*. But it is said that the notice given by Wright, the other purchaser, which related to the remainder of the land included in the tenancy, operated in conjunction with the bad notice previously given by the defendant as a valid notice to quit the whole of the property comprised in the tenancy. It may be that when first one and then the other of two joint tenants gives a notice to quit, the two notices can be taken together, provided that the latter of the two notices be given before the latest date on which a complete notice was required to be given in order to be effective. That would depend on the circumstances and the actual contents of the notices. Here, however, I have a notice given by a purchaser of part of the property comprised in the tenancy in respect of only part of the land purchased by him, and that notice is, as I have said, bad and void; and then I have a notice given at a later date by the purchaser of the rest of the property in respect only of that part of the property, so that this second notice is bad also. It is difficult to see how these notices can together constitute a valid notice."

It was to meet the difficulty occasioned by the decision in *Re Bebington's Tenancy*, *supra*, that sub-s. (2) of s. 140 of the L.P.A., 1925, was enacted. That sub-section provides that in s. 140 of the L.P.A., 1925, "right of re-entry" includes a right to determine the lease by notice to quit or otherwise," so that on a severance of the reversionary estate, the right to determine the lease by notice to quit or otherwise will be apportioned and will remain annexed to the severed part of the reversionary estate as severed, and will be in force with respect to the term whereon each severed part is reversionary, in like manner as if the land comprised in each severed part had alone originally been comprised in the lease. Assuming therefore that a similar set of circumstances as in *Re Bebington's Tenancy*, *supra*, were to be decided under the above provision, each notice to quit would be regarded

as good, *qua* that portion of the severed reversionary estate included therein.

It should be observed, however, that sub-s. (2) of s. 140 of the L.P.A., 1925, mitigates any hardship which might be inflicted on the tenant in such circumstances by providing that "where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land, by giving to the owner of the reversionary estate therein a counter-notice expiring at the same time as the original notice."

To examine now the object with which the amendment contained in s. 2 of the L.P. (Amend.) A., 1926, was made. The provisions of sub-s. (2) of s. 140 gave rise to certain difficulties where the tenancy was a tenancy of an agricultural holding. In order that the tenant of an agricultural holding might be entitled to compensation for disturbance, it is essential that the tenancy should have been determined by the landlord, and not by him. Section 27 of the Agricultural Holdings Act, 1923, allows a landlord to give the tenant notice to quit part of the holding, the tenant being entitled to compensation as if the part to which the notice relates were a separate holding. Section 27 also provides that in certain cases a tenant, who has been given notice to quit part of the holding, may treat the notice as a notice to quit the entire holding. In such a case s. 12 (7) (d) of the Agricultural Holdings Act, 1923, provides that compensation for disturbance shall not be payable in respect of the entire holding (although it will be payable in respect of the part included in the notice), unless such part, together with any other part affected by any previous notice given under s. 27, is more than one-fourth of the original holding, or unless the holding as proposed to be diminished is not reasonably capable of being cultivated as a separate holding.

Now s. 2 of the L.P. (Amend.) A., 1926, adds the following proviso to sub-s. (2) of s. 140 of the L.P.A., 1925: "Provided that where the land demised is an agricultural holding within the meaning of the Agricultural Holdings Act, 1923, the tenant on whom notice to quit is served by the person entitled to a severed part of the reversion may at any time within 28 days of the service of such notice to quit, serve on the persons severally entitled to the severed parts of the reversion, a notice in writing to the effect that he accepts the notice to quit as a notice to quit the entire holding given by the persons so severally entitled to take effect at the same time as the original notice; and such acceptance shall have effect as if it were the acceptance of a notice to quit to which para. (d) of sub-s. (7) of s. 12 of the said Act applies."

Where therefore the reversionary estate, which consists of an agricultural holding, is severed, and the owner of one or more parts of the severed estate gives the tenant notice to quit the part or parts which he owns, the tenant will not necessarily lose the right to compensation under the Agricultural Holdings Act, if he gives the remaining owners of the severed estate notice that he will treat the notice as one to quit his entire holding, provided that in such a case he can bring himself within para. (d) of sub-s. (7) of s. 12 of the Agricultural Holdings Act, 1923, i.e., provided he can show that the part or parts of the holding actually affected by the notice or notices to quit that may have been given, constitute more than one fourth part of the original holding, or that the remainder of the holding, in respect of which no notices have been given, cannot reasonably be cultivated as a separate holding.

The attention of the Legal Profession is called to the fact that the PHENIX ASSURANCE COMPANY Ltd., Phoenix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at 11, Waterloo Place, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2, and throughout the country.

# LAW OF PROPERTY ACTS.

## POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

### PRE-1926 UNDIVIDED SHARES—ADMINISTRATOR—VESTING ASSENT—MORTGAGE.

520. *Q.* In 1905 freehold property was conveyed on sale to A and B (two brothers) in fee simple as tenants in common. In 1917 B died intestate a bachelor leaving X his father his heir at law. In 1918 X died intestate a widower, leaving A his heir at law and only next of kin. On 6th October, 1921, A took out letters of administration to the estate of X, and nine days later A took letters of administration to the estate of his brother B, which were granted to him as administrator of X. A now wishes to mortgage the entirety of the property for his own benefit. Is it necessary for A as administrator of X to sign an assent vesting B's share of the property in himself as heir of X before he can execute the mortgage?

*A.* It does not seem necessary for A to sign such an assent before he can execute the mortgage if his duties as administrator were completed before 1926: see L.P.A., 1925, 1st Sched., Pt. II. If they were not so completed, however, a written assent is necessary: *Ad. of E. A.*, 1925, s. 36.

### SETTLED LAND—FUTURE TRUST FOR SALE—S.L.A. TRUSTEES—VESTING INSTRUMENT.

521. *Q.* By his will dated 25th October, 1916, A, after appointing his wife B and his friend C to be executors and trustees thereof gave and devised unto his trustees all his real estate upon trust to stand possessed of same, and to pay the income to B during her life and after her decease. A directed his surviving trustee to sell such real estate as A's daughters might direct, and to divide the proceeds arising therefrom equally between such three daughters. A died 18th February, 1925, and his will was proved 7th April, 1925, by B and C. The three daughters are all of age. It is now desired by all parties to sell part of the real estate.

(1) Has B the powers of a tenant for life; if not, who are the proper persons to convey the property?

(2) Are B and C trustees for the purposes of the Settled Land Acts?

(3) Is a vesting deed necessary?

*A.* (1) B is a person having the powers of a tenant for life under the S.L.A., 1925: *ib.*, s. 20 (1) (viii). The trust for sale does not arise until B's death and is therefore not effective at present.

(2) B and C are trustees for the purposes of the S.L.A., 1925: *ib.*, s. 30 (1) (iv).

(3) A vesting deed, or, more appropriately perhaps in this case, a vesting assent, must be duly executed: S.L.A., 1925, 2nd Sched., para. 2.

### PARTY STRUCTURE—RIGHT TO BUILD ON PARTY WALL.

522. *Q.* A is the assignee of the lease of a dwelling-house. The lessees have sold the freehold in the adjoining land to B, who has built on one half of the whole length of the boundary wall at the rear of the premises, thereby raising it some 6 feet or more. There is nothing in the lease as to walls or party walls, but the right is reserved to the lessors to build to any height on the adjoining land. Assuming, as is probable, that one half of the wall (the entire cost of which wall was borne by the lessee) was erected on part of the land comprised in the lease and the other half on the lessors' land, has B acted within his rights, and if not, is A entitled to remove that portion of the new wall which stands on the one half of the boundary wall?

*A.* It seems that this case would fall within L.P.A., 1925 1st Sched., Pt. V; for in the absence of an agreement to the contrary the part of the wall built on the lessor's land became the property of the lessor, and before 1926 the wall was held in undivided shares. Apparently therefore B has acted within his rights, but it is clear that he cannot cast upon A the heavier duty (in consequence of the building) with respect to repairing A's half of the wall, and he should certainly not be allowed to acquire an easement of support for the higher building, but it seems difficult to prevent this in practice, in view of the fact that the lessor reserved the right to build to any height on the adjoining land, and this is what has happened in this case.

### UNDIVIDED SHARES—PRE 1926 SETTLED LAND—ENTIRETY VESTED IN TRUSTEE FOR PERSONS ENTITLED IN UNDIVIDED SHARES—SALE.

523. *Q.* A B died in 1891, seised of real estate. By his will he appointed C and D executors and trustees, with the usual words defining the expression "my trustees." The testator devised his real estate unto his trustees upon trust, as to part thereof for his wife for her life, and on her decease, in trust for his daughter for her life, and after the death of his daughter, in trust for her children as she should appoint; and in default of appointment, in trust for all the children of the daughter in equal shares. The will contained an authority to the trustees at any time during the lifetime of the testator's wife, with her consent, to sell the real estate; but no other power and no trust for sale. The testator's wife died many years ago, and the daughter died in 1924, leaving several children, some of age and one or more under age, but without having exercised her power of appointment. In 1923 two new trustees of the will were appointed, one of whom died in 1925, so the only trustee is H T. It is now desired to sell the real estate, but questions arise as to who are the proper persons to sell.

(1) Is the real property, settled land, and although the trustees' express authority to sell ceased on the wife's death, is the surviving trustee a trustee for the purposes of the S.L.A.?

(2) Must the sole surviving trustee appoint an additional trustee?

(3) Did the property vest in the Public Trustee as one or more of the beneficiaries are infants?

Please advise how the property can be sold, and if any deed has to be executed before a sale, whether there is any precedent for it in the "Encyclopædia of Forms."

*A.* The entirety of the land was immediately before 1st January last vested in a trustee in trust for persons entitled in undivided shares. Hence L.P.A., 1925, 1st Sched., Pt. IV, para 1 (1), applied, and the land is now held by H T upon the statutory trusts and is not settled land at all. Another trustee must be appointed to act with H T. This will be done by a simple deed of appointment of an additional trustee for sale, and containing an implied vesting declaration. Questions (1) (2) and (3) do not, in the circumstances, arise.

### PARTIAL INTESTACY—DEATH OF INFANT BENEFICIARY—DEVOLUTION OF PROPERTY AS AN ENTAILED INTEREST.

524. *Q.* A died in March, 1926, leaving a widow, one child and a brother. By his will he gave his freehold dwelling-house to his wife, during her life and widowhood, and subject thereto to his child absolutely and appointed his wife sole executrix.

The wife and child survived the testator, but the child died shortly afterwards under the age of twenty-one years. The widow has recently married again. How does the freehold house devolve?

A. The child on his death, had a vested interest in fee simple. Hence A.E.A., 1925, s. 51, applies to the case, and the land will devolve as if it were an entailed interest vested in the infant. The heir will be determinable according to the old rules. From the information supplied in this case, the brother seems to be the heir.

#### IMPLIED TRUST FOR SALE—APPOINTMENT OF NEW TRUSTEE OF CONVEYANCE ON TRUST FOR SALE—VESTING DECLARATION—ENDORSEMENT OF MEMORANDUM OF APPOINTMENT.

525. Q. A and B, who were trustees of a will which did not authorise the purchase of land acquired a freehold house which was conveyed to them before 1926 as joint tenants. It is assumed that they held on an implied trust for sale. A died in 1926. C has been appointed new trustee of the will. (There is no person nominated to appoint trustees.)

(1) Must C be appointed by a separate instrument trustee of the house?

(2) If so, should B by the instrument convey to himself and C upon trust for sale and to hold the proceeds upon the trusts of the will or should he appoint?

(3) Is a memorandum of the appointment under s. 35 (3) T.A., 1925, necessary?

A. (1) Yes; T.A., 1925, s. 35 (1).

(2) No; an express or (to save a 10s. stamp) an implied vesting declaration under *ib.*, s. 40, is sufficient.

(3) Yes.

#### MORTGAGEES ON JOINT ACCOUNT—RECEIPT BY SOLE SURVIVOR.

526. Q. D is surviving mortgagee on a joint account. Can D give a purchaser of the mortgaged property a good receipt for the purchase money although he is in fact a trustee or must another trustee be appointed. The trusts do not come on the title?

A. D can give a valid receipt and the purchaser (acting in good faith) will not be concerned with any trust affecting the mortgage money whether or not he has notice of the trust: L.P.A., 1925, s. 113 (1).

#### UNDIVIDED SHARES—PRE-1926 MORTGAGE OF ONE SHARE TO ONE OF THE TENANTS IN COMMON—VESTING PROVISIONS—BUILDING LEASE.

527. Q. In 1923, freehold land was conveyed on sale to two persons in fee simple as tenants in common in equal shares. One of the purchasers, not having the whole of his half share of the purchase money available, borrowed the rest of it from the other purchaser, to whom he mortgaged his moiety of the land in fee simple. They now desire to lease part of the land for building purposes for 999 years. Must any, and what preliminary deed be executed by them to enable them to grant the lease? Should the lease be in the same form as if granted in 1925, with the variations arising from the mortgage fee simple having been converted into a term of years?

A. As there was an incumbrance affecting one undivided share: L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2) did not apply in this case, although the evil against which this provision seems to have been framed (see "Wolst. & Cherry," Vol. I, p. 503) could not possibly work its effect. Accordingly, para. 1 (4) of Pt. IV applied to vest the land in the Public Trustee. The two should appoint themselves trustees in place of the Public Trustee and then in exercise of their statutory powers (i.e., the powers of a tenant for life under S.L.A., 1925: *ib.*, s. 41, conferred upon them by L.P.A. 1925, s. 28 (1)) grant the proposed lease. So the form of the lease will be different. The mortgage has not been converted into a term of years but the land vested in the Public Trustee free from the incumbrance which now only affects the proceeds of sale.

#### JOINT TENANTS—SOLE SURVIVOR BENEFICIALLY ENTITLED—SALE.

528. Q. On the 28th February, 1921, freehold property was conveyed to A and his wife in fee simple as joint tenants. On the 14th July, 1926, the wife died leaving all her real and personal property whatsoever and wheresoever to the said A, and appointed him sole executor of her will. Before the will was proved A sold the said freehold property, and, after reciting the death of his wife, conveyed the entirety as beneficial owner. In view of your answer to Q. 459, p. 963, *supra*, has the purchaser a good title? If the answer is in the negative, what should be done to perfect the title of the purchaser? The matter was completed on the 13th September, 1926, and copies of the death certificate and the will were placed with the deeds handed to the purchaser.

A. When A contracted to sell he was not able to show a good title. Since then, and presumably before completion, the will was proved. That was sufficient to show that A was entitled in equity as well as at law and was in a position to convey as beneficial owner. In this case A could recite (which he could not in Q. 497 referred to) that he was solely and beneficially entitled to the property.

#### SETTLED LAND—SALE—DEATH OF TENANT FOR LIFE BEFORE COMPLETION.

529. Q. By a post-nuptial settlement made in 1907 the husband settled certain freehold property in trust for himself for life, and then for his wife (if she should survive him) for her life, with remainder to P.S. in fee simple. The wife died in 1915. Part of the settled property was sold before 1926 and a deed vesting the residue of it in the husband was made in August, 1926, and he contracted to sell it, but has since died without conveying it to the purchaser. P.S. is still living and is now entitled absolutely, under the settlement, to the property or the proceeds of sale thereof. There are two trustees of the settlement. Kindly inform us (1) who are the necessary parties to the conveyance to the purchaser; (2) whether a grant of representation, specially limited to the settled land, must be obtained in respect of the husband; and (3) whether, in spite of L.P.A., 1925, s. 45 (9) (a), the purchaser will be entitled to have the deed of settlement and a deed appointing a new trustee, as well as the vesting deed, handed over on completion, as P.S. is now absolutely entitled to everything held under the settlement?

A. There are several alternative ways of making title: (a) The S.L.A. trustees may renounce probate and a general grant of representation may be taken by the general personal representatives, who would convey to the purchaser or who would assent in writing to P.S. for him to convey to the purchaser. (b) A grant of representation specially limited to the settled land may be taken out by the S.L.A. trustees and they could then convey to the purchaser or assent to P.S. for him to convey. If the conveyance is made by P.S. it seems that he will have to hand over the two documents, unless he retains part of the land subject to the trust. But it is possible that if the conveyance is made by personal representatives general or special, they would not have to hand over these documents.

#### UNDIVIDED SHARES—LAND VESTED IN TWO SETS OF PERSONAL REPRESENTATIVES.

530. Q. A, who was seised in fee simple of freehold property, died in 1888, having by his will devised his real estate to his father (B) and his mother (C), share and share alike, who thus became tenants in common of the freehold property, and testator appointed B and C to be executor and executrix of his will. A died in 1900 and his will was proved by B, power being reserved of making the like grant to C. B died in 1907, having by his will appointed D and E executors, who duly proved same. C died intestate in 1915 (without having proved A's will) and letters of administration to her estate were granted to F. D, E and F have recently contracted to

sell the property to a purchaser. Having regard to 1st Sched., L.P.A., 1925, Pt. IV, para. 1, can D, E and F execute a valid conveyance to the purchaser as personal representatives of B and C respectively, or, alternatively, can they convey as trustees under a statutory trust for sale?

A. (It is assumed that what is meant is that A made his will in 1888 and died in 1900.) Immediately before the commencement of the L.P.A., 1925, the property was vested, one share in D and E as personal representatives of B, and the other share in F as personal representative of C, and the question is, did the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1) apply? It is conceived that no definite answer one way or another can be given to this question until the matter has been decided by the courts. If sub-para. (1), *supra*, is read so as to refer to the entirety of the land being vested in *one set* of trustees, or *one set* of personal representatives, then it did not apply to this case. If the same sub-paragraph is construed as referring to the entirety of the land being vested in trustees or personal representatives, whether trustees or personal representatives of the entirety or of undivided shares, then the sub-paragraph would apply in this case.

The opinion here given is that sub-para. (1) did not apply, and that, therefore, new trustees in place of the Public Trustee have to be appointed under, *ib.*, sub-para. (4), and such new trustees could convey the property to the purchaser.

It may be, however, that D, E and F are absolutely entitled to the property in undivided shares and that they may be taken to have assented to themselves as beneficial owners when sub-para. (2) would be applicable and they could convey as trustees holding upon the statutory trusts.

#### PERSONAL REPRESENTATIVE OF SURVIVING TRUSTEE—POWERS.

531. Q. Surely the answer to Q. 463 is based on the footing that the S.L.A., 1925, applied on B's death, which, since it occurred before 1st January, 1926, was not the case?

A. Yes, there was a manifest clerical error, the answer must be read on the footing that B's death took place in 1926, not 1925. On that footing the problem raised was one of some little difficulty, but that actually put in Q. 463 admits of a more straightforward answer. The T.A., 1925, s. 18 (2), gives the son power to appoint a new trustee of his mother's will, but s. 8. (3) forbids him to receive the proceeds of sale of the trust property. He should therefore appoint two new trustees under s. 36 (1) (one being himself if he chooses), for, on the appointment of a new trustee, his powers under s. 8. (2) cease. The two new trustees will, of course, have full power of sale. As to the last suggestion in the question, the son as his father's administrator is not his mother's personal representative, and cannot administer her estate.

#### DISCLAIMER—HOW MADE—DEATH DUTIES.

532. Q. A testatrix by her will gives her residuary estate to her trustees upon trust for conversion, and after payment thereof of her funeral and testamentary expenses and debts and legacies to hold the ultimate residue, upon trust for the children of A, and for testatrix's brother B, in equal shares. Can such disclaimer be effected informally, or should there be a deed of surrender? And in the event of such disclaimer would estate duty or succession duty be payable upon A's death in respect of the property in question? Will it make any difference, so far as liability to duty is concerned, if A dies within three years from the date of disclaimer?

A. An informal disclaimer would be effectual, provided that it is clear and definite. For example, a letter written by A to the trustees, placing on record the fact that he has already refused to take any benefit under the bequest, and that he absolutely declines to do so in the future and disclaims all interest in the same—would be sufficient. If preferred, a deed of disclaimer might be executed, but it must not be in the form of a surrender, since a surrender would imply a previous acceptance. The disclaimer will have the effect of

cutting out the gift to A, and accelerating the interests of those intended to take in remainder. No duty will be payable on A's death in respect of the property in question, if such disclaimer is made, whether A dies within three years after the date of the disclaimer or not. The duty payable on the death of the testatrix will be the same as if the gift to A's children and B had been an immediate gift in possession instead of a gift in remainder. The case of *Re Young*, 1913, 1 Ch. 272, will be found useful. See also *Hanson*, last ed., p. 284. In *Re Young*, the court took the view that an informal disclaimer might afterwards be retracted, as regards the future and unless other parties had altered their position on the faith of it. The correctness of this view may be doubted, but it does not affect the present case. In *Re Young*, there were two successive life interests. The first tenant for life disclaimed, and subsequently, the second tenant for life having died in her lifetime, she desired to retract her disclaimer for the remainder of her life before the corpus was distributed. In the present case there being but the one tenant for life, distribution will take place immediately upon the disclaimer.

#### RATING—VACANT AGRICULTURAL LAND.

533. Q. A field of about six acres which the owner has up for sale in building lots was let as accommodation land to an adjoining farmer. The tenancy expired in November, 1925, and the land was not re-let until the following April. Is the owner liable for poor rate during the period for which the land was vacant?

A. On the authority of *Pembroke v. Overseers of Wye*, 1883, 47 J.P. 359, the owner was not liable, but that case involved another point, and, the overseers being placed in a dilemma its authority may be questioned. Here, however, the owner has not cut the hay, so he should be entitled to resist the rate. *Smith v. The Assessment Committee of the New Forest Union*, 1890, 61 L.T. 870, is also in point, and in his favour. *R. v. Heaton*, 1856, 20 J.P. 37, cited in the last case, may be distinguishable inasmuch as the owner let the land in April, and the hay would benefit the tenant.

#### MORTGAGE—MORTGAGOR IN POSSESSION—MORTGAGEE'S REMEDIES.

534. Q. A.B. is the mortgagee under a mortgage in 1920, of a freehold small holding comprising about eight acres. The interest is considerably in arrear, and A.B. proposes to sell the property. The mortgagor's administratrix and her married son are in occupation of the house, and she has let the land without the mortgagee's consent. There is no attornment clause in the mortgage, and the provisions of the Conveyancing and Law of Property Act, 1881, relating to leasing are not exercisable without A.B.'s consent. What steps should A.B. take to obtain possession? Can he take ejectment proceedings without giving the mortgagor any notice other than a demand for possession? Will a purchaser from A.B. stand in the same position as A.B.? Have the new Law of Property Acts made any difference to the position of a mortgagee as to obtaining possession? Please advise the mortgagee generally as to his position and procedure.

A. Certain data affecting the problem are not given, i.e., the relative value of the house and land to indicate whether the Rent Acts apply, and the validation of the mortgage having regard to s. 12 (1) (b) of the S.H.A., 1908, forbidding assignment without consent. It will therefore be assumed that s. 12 (2) (iii) of the Rents Act excludes its application to the house, and that s. 12 (1) (b) of the S.H.A., 1908, does not in fact invalidate the mortgage. On these assumptions the problem is one between mortgagor and mortgagee under the general law, and the mortgagee has the remedies conferred by ss. 101, 109, etc., of the L.P.A., 1925, not widely differing from those under the previous law. He can also go into possession, see s. 95 (4). It may be assumed here, however, that he could not peaceably go into possession of the house, or treat the tenant of the land as a trespasser. This being so,

he must apply to a court, either by ejectment proceedings or foreclosure coupled with a prayer for possession. The proper notice to the mortgagor of such proceedings, if by reason of non-payment of interest or any other reason the mortgage money has become due and the mortgagor is in default, is service of the writ, otherwise the mortgagor should be served with a notice to pay off, and may be sued for arrears of interest as a debt due. In either case, however, a formal demand for possession will not prejudice the mortgagee. The mortgagor's tenant may be required to state whether he claims an interest in the land, and, if he does so, will properly be defendant in a foreclosure action, which probably in the long run would be simpler than separate ejectment actions. Alternatively, of course, the mortgagee may if he pleases recognise or adopt the tenancy. To appoint a receiver when a mortgagor was personally in possession would be useless, and legal proceedings cannot be avoided. After foreclosure absolute s. 88 (2) of the L.P.A., 1925, will apply, and, as pointed out in the answers to previous questions, the awkward doctrine of indefinite opening of foreclosure is abolished.

## Reviews.

*International Law.* By L. OPPENHEIM. Fourth edition. Edited by A. D. McNAIR, C.B.E., LL.D. Vol. II, Disputes, War and Neutrality. Longmans, Green & Co., Ltd.

It is five years since the issue of the second volume of "Oppenheim" in the third edition, and six since the first volume came out in that edition; volume II is the first to appear in the new or fourth edition.

Dr. McNair has performed his task admirably. His new matter relates in part to the progress of the activities of the League of Nations since 1920, in part to the proposals of the Commission of Jurists which met at The Hague in 1922-1923 to draft rules for air warfare and "wireless" in war, and in part to other recent developments of practice and doctrine in international law.

A clear account is given of the functions and work of the Permanent Court of International Justice which was set up in 1921, and the twenty new pages devoted to this subject include very valuable lists, first, of bibliographical references, secondly, of judgments and opinions delivered by the court.

The efforts made by the League of Nations and, more successfully, by the Washington Conference of 1922 to reduce or limit armaments are described.

The compulsive powers of the League of Nations are very fully treated and the provisions of Art. 16 of the Covenant in regard to the "economic boycott" of covenant-breaking states are carefully examined.

The chapter of three sections on "Air Warfare" in the former edition is expanded to one of seven in the new, and there are separate sections dealing with the effect of the outbreak of war upon civil aircraft found within enemy jurisdiction, with the entry of belligerent aircraft into neutral territory, and with the use of aircraft for enforcing blockade.

War indemnities and reparations, the legality of war zones, such as those declared by Germany in the late war, and some other miscellaneous questions of war and neutrality are discussed in further new sections. S.

*Crime and Custom in Savage Society*, by CRONISLAW MALINOWSKI. London: Kegan Paul, Trench, Trubner and Co. Limited. New York: Harcourt, Brace & Co., Inc. 1926. xii and 132 pp. 5s.

Dr. Malinowski in his new work—published in the series of The International Library of Psychology, Philosophy and Scientific Method, makes an interesting analysis of primitive law and custom, and the forces contributing to their obedience or evasion in a Melanesian community. This analysis is marked by three important features: (1) A vigorous

condemnation of the prevalent views of anthropologists that the savage obeys his primitive system of law "slavishly," "unwittingly," "spontaneously," or that he is urged to do so by the fear of public opinion or of supernatural punishment. (2) The confident advancement of a new theory by the author, in support of which he cites some curious and picturesque examples of Melanesian customs, to the effect that the savage is not a custom-tied group-ridden being, but a man affected by, amongst other forces, personal and family self-interest, ambition and vanity. (3) An admirable study of criminal law, its observance, its evasion and its sanctions within the same community.

Whilst on the one hand it is scientifically dangerous to generalise from the extraordinary elements in any system, and from certain isolated facts of disobedience to primitive rules—a danger into which we agree with Dr. Malinowski many students have fallen—it is equally undesirable that a general theory of primitive law should be accepted merely on the basis of observations made in a single community, when that is a community which though primitive, when compared with modern systems, shows traces of considerable progress in economic activities.

All students of anthropology and primitive law will extend a hearty welcome to this instructive volume by a field anthropologist.

## Books Received.

*The Workmen's Compensation Act, 1925, with Notes, Rules Orders and Regulations.* W. ADDINGTON WILLIS, C.B.E., LL.B., 24th Edition. 1926. Crown 8vo, pp. xcix, 651 and (index) 74. Butterworth & Co., Bell-yard. Shaw and Sons, Limited, Fetter-lane. 15s. net.

*The Rating and Valuation Act, 1925 (and Incorporated Statutes), with Statutory Rules and Orders, Official Circulars and Forms, and List of New Rating Authorities.* HERBERT DAVEY. 1926. Medium 8vo, pp. xxvii and 464 (with index). Stevens & Sons Limited, Chancery-lane. £1 net.

*The York-Antwerp Rules. Their History and Development with comments on the Rules of 1924.* GEORGE RUPERT RUDOLF (member and past chairman of the Association of Average Adjusters; joint editor of "Lowndes' Law of General Average," 5th and 6th editions). 1926. Medium 8vo, pp. xvi and 320 (with index). Stevens & Sons Limited, Chancery-lane. 15s. net.

*Treatment of Tuberculosis—Costs at Residential Institutions.* Memo. 122, T. October, 1926. Ministry of Health.

*Where to look for your Law. As set out in the latest Legal Text Books. With dates of latest Authorities.* 3rd Edition. Revised to October, 1926. Large Crown 8vo, pp. 125. Stevens & Sons Limited, Chancery-lane. 1s. net.

*Mews' Digest of English Case Law.* Quarterly Issue. October, 1926. (Containing cases reported from 1st January to 1st October, 1926). AUBREY J. SPENCER, Barrister-at-Law. 318 ccls. Stevens & Sons Limited, Chancery-lane: Sweet and Maxwell Limited, Chancery-lane.

*The Judges and The Judged.* CHARLES KINGSTON. (With twelve illustrations). Demy 8vo, pp. 267 (with index). JOHN LANE. The Bodley Head Limited, London. 12s. 6d. net.

*The Parliament House Book.* 1926-27 (102nd publication). Crown 8vo, pp. xcv and (in 8 divisions) 1,482. W. Green and Son Limited, Law Publishers, Edinburgh. 21s. net.

*The Lawyer's Companion and Diary, and London and Provincial Law Directory for 1927, with Tables of Costs, Stamp Duties, Time-Tables of the Courts, Index to Practical Statutes, List of 1926 Public Statutes, Legal Business of the Months, Income Tax, Estate, Legacy and Succession Duties.* E. LAYMAN, B.A., Barrister-at-Law. 81st Annual Issue.

Large Crown 8vo. Part I, 226 pp., and Diary; Part II, 714 pp. Stevens & Sons, Ltd., Chancery Lane; and Shaw and Sons, Ltd., Fetter-lane. 7s. 6d. net.

*Reports of Tax Cases.* Vol. X, Part IX. 1926. H.M. Stationery Office. 1s. 6d. net.

*British Slavery and its Abolition.* 1823-1838. WILLIAM L. MATHIESON, Hon. LL.D., Aberdeen. Demy 8vo. pp. x and 318 (with Index). Longmans, Green & Co., Ltd., 38 Paternoster Row, E.C.4, New York, Toronto, Bombay, Calcutta and Madras. 16s. net.

*Origins of Place Names—Laws.* By "AN IGNORANT STUDENT." 1926. The Chiswick Press; Charles Whittingham & Griggs (Printers), Ltd., Took's-court, Chancery-lane. Unillustrated 1s. net. Illustrated 1s. 6d. net. W. P. H.

## Obituary.

SIR EDWARD H. BUSK, M.A., LL.B.

Sir Edward Henry Busk, solicitor, who died at his residence, Heath End, Checkendon, Reading, on the 29th October, was from 1873 to 1899 a member of the firm Messrs. Bolton, Robbins & Busk, afterwards Busk, Mellor & Norris, of 45, Lincoln's Inn Fields. The only son of the late Mr. Henry William Busk, barrister-at-law, he was born in London on 10th February, 1844, and was therefore in his eighty-third year. Sir Edward was sent to University College School, afterwards going on to University College, London, and Manchester New College, graduating B.A. with first-class honours in 1863, M.A. in 1864, and LL.B. with first-class honours, taking the University law scholarship and also the Joseph Hume Scholarship three years later. He was admitted a solicitor in 1868 and for some time was Assistant Examiner to The Law Society. In due course he became a Fellow of University College, and a Fellow and Vice-Chancellor of the University of London and Chairman of Convocation. He was intimately associated with the re-organisation of the University which followed the Act of 1898. In addition to his professional work, he threw himself wholeheartedly into administrative work for several famous schools, and as an educationalist it is recognised that he did a great deal to mould the administrative outlook of University life in London and in institutions that look to London for a lead. When history falls into perspective he will undoubtedly have a definite place in the modern history of education in London. His valuable services were utilised with advantage under various measures dealing with the University of London. He was a Commissioner under the University of London Act, 1898-1900, under the University College London (Transfer) Act, 1905-7, and under the King's College London (Transfer) Act, 1908-9, in addition to which he served as Vice-Chancellor of the University in 1905-7 and Chairman of Convocation and a Member of the Senate from 1892 to 1922. Sir Edward, upon whom the honour of knighthood was conferred in 1901, was Chairman of the Governors of the Central Foundation Schools of London and of Gresham's School, Holt (Norfolk), a Governor of the Imperial College of Science and Technology, Dulwich College, Christ's Hospital, and Cheltenham Ladies' College, a Trustee of the London Parochial Charities, Vice-President and Chairman of the Executive Committee of the City and Guilds of London Institute, a member of the County of Kent Education Committee (from 1903 to 1908), and a Corresponding Member of the National Educational Association of America. In addition to the heavy work which these positions necessarily involved, he took a great interest in the development and protection of our deep-sea fisheries and was a member of the Court of the Fishmongers' Company, President of the National Sea Fisheries Protection Association, and President and Treasurer of the Oyster Merchants' and Planters' Association. He also held the important position of Chairman of the London Board of

the London and Lancashire Insurance Company. He took an active interest in the volunteer movement, and was formerly a major in the Artists' Rifles. Sir Edward Busk married in 1880 Marian, daughter of the late Mr. Lewis Balfour.

SIR J. M. LEES, K.C.

Sir John McKie Lees, K.B.E., M.A., LL.B., K.C., who died at his residence, 4, Darnaway-street, Edinburgh, on Friday, the 5th inst., was well known in Scotch legal circles as a sound and capable lawyer. The only surviving son of the late Mr. Walter Lees, of Glasgow, he was born on the 18th November, 1843, and educated at Ayr and Edinburgh Academies and Edinburgh University, graduating in 1864, taking the degree of LL.B. three years later. He was called to the Bar in 1867 and took silk in 1901, and from 1874 to 1880 he was Examiner of Glasgow University for Degrees in Law, and for the last three years of that period also held the same position at Edinburgh University. He was Sheriff Substitute of Lanarkshire at Airdrie for three years, and in 1875 was appointed to a similar position at Glasgow, which he held for twenty-six years, resigning it on accepting promotion to the higher position of Sheriff of Stirling, Dumbarton and Clackmannan. He was transferred to the County of Forfar in 1917 and in the same year made Commissioner of Northern Lighthouses. From 1907 to 1919 he acted as Convener of the Sheriffs of Scotland and he received the honour of knighthood in 1920.

Sir John was an acknowledged authority on the Sheriff Courts of Scotland, and his numerous and valuable contributions to legal literature were designed for the purpose of benefiting the Sheriff Court Bench and Bar.

Whilst he held the position of Sheriff Substitute in Lanarkshire he gave an important decision affecting the Law of Copyright, in *Caird v. Sime*, 12 A.C. 326. This case was ultimately taken to the House of Lords, where Sir John's judgment in the Court of First Instance was restored.

Sir John Lees was twice married and leaves three sons.

W. P. H.

## Correspondence.

### The Law Association and Scarcity of Coal.

Sir,—Will you allow me, through the columns of your JOURNAL, to remind all London solicitors of the extra hardships that the coal strike is placing on many aged widows and daughters of deceased London members of our profession through no fault of their own.

My board of directors is doing its best to cope with the difficulty, but immediate financial support is absolutely necessary to enable them adequately to meet the pressing need of many of these poor ladies. Will not more members of the profession come forward and help? Now is a real time of need.

The Law Association,  
3, Gray's Inn Place,  
Gray's Inn, W.C.1,  
4th November.

E. EVELYN BARRON,  
Secretary.

### A Conveyancer's Diary.

Sir,—With reference to the article on title by tenant for life and remaindermen under the above heading which appeared in "A Conveyancer's Diary," at p. 1061, *supra*, we do not quite understand the statement that the appointment of S.L.A. trustees by the tenant for life and remaindermen need not be under seal, for s. 30 (1) (v) of the S.L.A., 1925, reads "the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, etc.," and we do not see how s. 36 of the T.A., 1925, helps, as presumably the pre-1926 deed creating

the settlement would not give the tenant for life the power of appointing trustees. We should be glad if you would kindly elucidate this point.

Great Yarmouth.

HARMER RUDDOCK.

9th November.

[T.A., s. 36, enables the appointment of new trustees to be made in writing; this section applies to S.L.A. trustees: *ib.*, s. 64 (1). But as our correspondent points out, S.L.A., 1925, s. 30 (1) (v) expressly states that the appointment by tenant for life and remaindermen must be by deed.—Ed., *Sol. J.*]

## House of Lords.

**Glicksman (Pauper) v. Lancashire & General Assurance Co.**

4th November.

INSURANCE — BURGLARY — PARTNERS — PROPOSAL FORM — ANSWERS — MISREPRESENTATION — CONCEALMENT — MATERIALITY — NON-DISCLOSURE BY ONE PARTNER.

*It is a misrepresentation sufficient to vitiate a policy of insurance if one of two partners who wished to insure their premises did not disclose the fact that another company had refused to issue a policy to him in respect of the same premises before the partnership began. The non-disclosure also amounted to the concealment of a material fact.*

The defendants issued to the plaintiff and a man named Rohman, who carried on business in co-partnership, a policy insuring them against burglary. One of the conditions of the policy was that any misrepresentation or concealment in the answers to the questions in the proposal form should render the policy void. Question 7 was: "Have you previously been insured against burglary?" Answer: "No." Question 8: "Has any company declined to accept or refused to renew your burglary insurance?" Answer: "Yorkshire accepted, but proposers refused on account of fire proposal." That was explained to mean that the Yorkshire company were willing to grant a burglary policy if the assured at the same time took out a fire policy. During the currency of the policy the partnership between the plaintiff and Rohman was dissolved and the policy was then continued for the benefit of the plaintiff who carried on the business. He afterwards made a claim under the policy, but the defendants refused to pay, alleging that the policy was avoided by misrepresentation. The dispute was referred to arbitration when the appellant in the course of his evidence disclosed the fact that he personally had been refused a burglary insurance by the Sun Insurance Company. Eventually the arbitrator decided in favour of the defendants and agreed to state a special case, which came on for hearing before ROCHE, J., who entered judgment for the plaintiff. The Court of Appeal reversed that decision, holding that there was evidence before the arbitrator of concealment of a material fact.

Viscount DUNEDIN, in delivering judgment, said the appellant having insured his stock-in-trade with the respondents against burglary applied to the insurance company for the insurance money and was met by the allegation that there had been no burglary. The dispute went to arbitration and the arbitrator found that the goods had been stolen and that the appellant had suffered loss to the amount of £1,656 odd, the amount claimed. But in the course of the hearing the appellant disclosed the fact that he had been refused by another insurance office. When however the policy came to be looked at it was found that at the time when the proposal was made the appellant was in partnership and the proposal was made on behalf of the partnership. The word "you" used in the questions in the proposal form was either singular or plural, and when the answers came to be examined there was some confusion. If the word was used in the plural there had been no refusal, but the statement was not true

if it was used in the singular. The arbitrator came to the conclusion that that avoided the policy. ROCHE, J., held that there was no misrepresentation and no concealment. He (Lord Dunedin) did not agree. The law on the subject had often been stated. The contract of insurance was a contract *uberrimae fidei*. It was possible for insurance offices to stipulate that the answers to certain questions in the proposal form should be the basis of the insurance, and then no question could arise as to materiality. But, apart from that, a duty lay on the applicant not to conceal any consideration which could affect the mind of a man of ordinary prudence in accepting the risk. On the question whether the word "you" was used in the singular or plural his Lordship expressed no opinion. He thought the case could be decided on the other point. As to concealment he had some doubt on the question of materiality, but the fact that a question such as Question 8 was put showed that the company thought it material, and there were grounds for supporting the finding of the arbitrator on the point. The appeal would be dismissed. The other noble and learned Lords concurred.

COUNSEL: Croom-Johnson and Claud Mullins; Rayner Goddard, K.C., and H. C. Dickens.

SOLICITORS: F. J. Rutledge; Coward, Chance & Co.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

## High Court—Chancery Division.

*In re Craven's Settled Estates.*

Astbury, J. 28th July.

SETTLED LAND—NO LIFE TENANT—STATUTORY OWNER WITH PROTECTED LIFE INTEREST—POWERS OF A TENANT FOR LIFE CONFERRED BY THE SETTLEMENT ON THE STATUTORY OWNER—REFUSAL TO EXERCISE—NO JURISDICTION TO AUTHORISE TRUSTEES TO EXERCISE ON BEHALF OF TENANT FOR LIFE—RELEASE OF POWERS—EFFECT OF RELEASE—SETTLED LAND ACT, 1882 (45 & 46 Vict., c. 38), s. 58—SETTLED LAND ACT, 1925 (15 Geo. 5, c. 18), s. 23, s-s. (1), s. 24, s-s. (1), s. 104, s-s. (1), (2), s. 117, s-s. (1), cl. xxvi, xxviii—LAW OF PROPERTY ACT, 1925 (16 Geo. 5, c. 20), s. 155.

*There is a distinction between tenants for life and other persons such as limited owners with an estate or interest in possession who are given the powers of a tenant for life, and persons not in these categories who are nevertheless statutory owners within cl. xxvii of s. 117 (1) of the Settled Land Act, 1925, and the court cannot make an order under s. 24 (1) of the said Act authorising the trustees for these latter persons to exercise their powers in their name and on their behalf, but the court will make a declaration that upon these latter persons releasing their powers the trustees are to have such powers under s. 23 (1) (b), such release being effected under s. 155 of the Law of Property Act, 1925.*

Originating summons. This was a summons taken out by the Earl of Craven asking (*inter alia*) for (a) an order under s. 24, s-s. (1) of the Settled Land Act, 1925, authorising the trustees of the settlement of the Craven estates to exercise a life tenant's powers in his name, and on his behalf, and (b) alternatively, a declaration that, upon the Earl, by deed, releasing the powers of a life tenant expressed to be conferred upon him by the re-settlement during such period as there was no life tenant, the trustees would have a life tenant's powers under s. 23, s-s. (1) (b). The facts were as follows:—Under and by virtue of the re-settlement of the Craven estates, dated 11th February, 1919, and in the events that had happened, the fifth Earl of Craven was entitled to a protected life interest in the net rents of the Craven Estates, with remainder to his infant son, Viscount Uppington, for life, with remainders over. The Earl had never been a tenant for life or a limited owner, with an estate or interest in possession,

having the powers of a tenant for life under s. 58 of the Settled Land Act, 1882 (45-46 Vic., c. 38), which section was now re-enacted by s. 20 of the Settled Land Act, 1925, but under the express terms of the re-settlement as construed by Lawrence, J., in his order, dated 22nd June, 1923, he had the same Settled Land Act powers as if he were a tenant for life in possession. The Earl resided a good deal out of England, and wished to be relieved of any responsibility in regard to the settled estates, and desired the trustees to manage them and execute all the powers. The trustees were quite willing to adopt this course if they could legally do so. Hence this summons.

ASTBURY, J., after stating the facts, said:—Section 23 (1) of the Settled Land Act, 1925, provides that where under a settlement there is no life tenant, nor, independently of this section, a person having by virtue of this Act the powers of a tenant for life, then (a) any person of full age on whom such powers are by the settlement expressed to be conferred; and (b) in any other case the trustees of the settlement shall have the powers of a life tenant under the Act, and after referring to s. 24, s-s. (1), which provides that where a life tenant who has ceased to have a substantial interest "in his estate or interest" in the settled land has unreasonably refused to exercise any of the powers conferred on him by the Acts, or "consents to an order under this section," the court may make an order authorising the settlement trustees to exercise the life tenant's powers in his name and on his behalf. A difficulty arises owing to the definitions of life tenant and statutory owner in s. 117, s-s. (1). By cl. xxviii, life tenant includes a person "not being a statutory owner" who has the powers of a life tenant under the Act. By cl. xxvi, statutory owner means the trustees of the settlement or other persons who during a minority "or at any other time when there is no tenant for life," have the powers of a life tenant under the Act. The true clue may be that the policy of the Act is to differentiate life tenants proper and other persons, such as the limited owners, with an estate or interest in possession, referred to in s. 20, who were given a life tenant's powers from people not in these categories, who were nevertheless statutory owners within cl. xxviii. If that view is correct, s. 24, s-s. (1), refers to life tenants proper and the limited owners with an estate or interest in possession mentioned in s. 20, who are given a life tenant's powers, but it does not refer to persons with no estate or interest who, though they may be given a life tenant's powers, are only statutory owners. That is the position of the Earl in this case. He is not a life tenant. He is only a statutory owner with a life tenant's powers under s. 23, s-s. (1) (a). It is impossible, therefore, to make an order under s. 24, s-s. (1). The question remains whether the Earl can release his powers under s. 155 of the Law of Property Act, 1925, which provides that "a person to whom any power, whether conferred with an interest or not, is given, may by deed release or contract not to exercise the power." Now s. 104 of the Settled Land Act, 1925, provides by s-s. (1), that a life tenant's powers under the Act are not capable of assignment or release and by s-s. (2), that a contract by a life tenant not to exercise those powers shall be void. Having regard to the definition of life tenant that means that the powers of a life tenant or of a person with a life tenant's powers (not being a statutory owner) are incapable of assignment or release, but the prohibition does not extend to a statutory owner where the statute intended to include a statutory owner as well as a life tenant, it expressly said so, as in s. 107. The Earl, therefore, being only a statutory owner, can release his powers by deed, and on his doing so, s. 23, s-s. (1) (a) will cease to operate, and the trustees will have a life tenant's powers under s. 23, s-s. (1) (b). I make the declaration accordingly.

COUNSEL: *Jenkins, K.C., and Dighton Pollock; Archer, K.C., and Beebe; Topham, K.C., and Tillard.*

SOLICITORS: *Rider, Heaton, Meredith & Mills.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

### *In re Gray: The Public Trustee v. Wodehouse.*

Clauson, J. 22nd October.

TENANT FOR LIFE AND REMAINDERMAN—REPAIRS—STRUCTURAL REPAIRS—INCIDENCE OF COSTS—TRUSTEE FOR SALE—POWERS OF MANAGEMENT—EQUITABLE APPORTIONMENT—JURISDICTION OF COURT—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20) s. 28—SETTLED LAND ACT, 1925 (15 Geo. 5, c. 18) s. 102.

*The power of trustees for sale to "repair" the property is wide enough to include substantial repairs of a permanent nature the word being associated with the word "rebuild" in s. 102 of the Settled Land Act, 1925.*

*Since the recent statutes trustees are not entitled to seek the aid of the court to apportion the cost of repairs on equitable principles between tenant for life and remainderman, as was done in In re Hotchkiss, 1886, 32 Ch. D. 408; but ought to do the repairs and use their statutory power to pay for them out of income.*

#### Originating Summons.

This was an originating summons taken out by the plaintiff, the Public Trustee, against the assignees of the life interest under the will and the remaindermen, asking whether the plaintiff ought to execute all necessary and proper repairs to certain flats held by him on trust for sale, and whether the cost of such repairs ought to be borne by the income or the capital of the settled property, or ought to be apportioned between income and capital. The facts were as follows: By an order of the Chancery Division made in August, 1898, it was declared that the share of one R. S. Gray, which was bequeathed to him by the will of his deceased mother was settled upon him for life, with remainder to his children; and trustees were directed to be appointed of his settled share of her estate. The will contained no powers or provisions with regard to keeping the property in repair. The property subject to the trusts of the settlement consisted of War Loan and some freehold flats known as Clapham Court, Clapham. These flats had become subject to the trusts of the settlement in the following manner: In 1905 the trustees advanced some trust moneys upon a mortgage of the flats, and they foreclosed in 1918, and they had since that date at the request of all the beneficiaries under the settlement retained these flats unsold. In 1919 Mr. R. S. Gray was adjudicated a bankrupt, and in 1923 his interest under the settlement was sold and assigned to the defendants Wodehouse and Osmond. In 1925 the net profits after payment of outgoings and internal repairs, amounted to over £400. There were twelve separate flats in Clapham Court. Since the year 1917 no painting or substantial repairs had been done to the outside of the buildings, and considerable structural repairs had become necessary, which had been estimated at £200. All were agreed that the repairs should be done, but the defendants Wodehouse and Osmond contended that the cost of the repairs should be borne by capital, and the remaindermen on the other hand claimed that they should be paid out of income.

CLAUSON, J., after stating the facts, said: The property having been purchased by the trustees, was held upon trust for sale (see s. 31, s-s. (1) 5, of the Law of Property Act, 1925). The present trustee, being a trustee for sale, has, by virtue of s. 28 of that Act, in relation to the property the powers of management conferred upon trustees of a settlement by the Settled Land Act, 1925, during a minority, and by s-s. (2) of s. 28 the net rents and profits of the land until sale, after keeping down costs of repairs, etc., are to be paid or applied "in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested." Then, by s. 102, s-s. (1), of the Settled Land Act, 1925, powers were conferred upon the trustees of the settlement of management of the land, including power, under s-s. (2) (b), "to erect,

pull down, rebuild and repair houses and other buildings and erections," and under s-s. (3) they have powers from time to time "out of the income of the land" to pay the expenses incurred in the management or in the exercise of any power conferred by the section. In my judgment the exercise by the trustees of the powers of management so conferred by s. 28 of the Law of Property Act, 1925, by reference to s. 102 of the Settled Land Act, 1925, is not restricted to the period of minority, and the word "repairs" in s-s. (2) of s. 28 has the same meaning as the word "repairs" in s-s. (2) (b) of s. 102 of the Settled Land Act, 1925. Further, the repairs authorised by that section, associated as they are in cl. (b) with the word "rebuild," are wide enough to include substantial repairs of a permanent nature to the exterior of the flats and include such an item in the specification as "pin up arches where settled." It has been contended that notwithstanding those provisions in the recent statutes trustees are still entitled to seek the aid of the court to apportion the costs of repairs on equitable principles between the tenant for life and remaindermen upon the principle of *In re Hotchkys*, 1886, 32 Ch. D. 408. That contention cannot prevail. Since the recent statutes there is no reason why the court should apply the principles applied in the case of *In re Hotchkys*, *supra*. The powers of trustees are intended, as far as possible, to be codified by those statutes. There is no reason why the court should not leave the trustee to deal with the matter under the statutory powers given to him by the legislature, and in the circumstances the trustee's proper course is to do the repairs and to use his statutory powers of paying for those repairs out of income. The first question in the summons will be answered in the affirmative, and the cost referred to in the second question will be borne by income.

COUNSEL: *H. F. F. Greenland; John W. F. Beaumont; E. G. Palmer.*

SOLICITORS: *C. E. W. Ogilvie & Co; Peacock & Goddard; Martin & Barry O'Brien.*

[Reported by L. MORGAN MAY, Esq., Barrister-at-Law.]

## High Court—King's Bench Division

### Outerbridge v. Outerbridge.

Lord Hewart, C.J., Avory and Salter, J.J. 15th October.

HUSBAND AND WIFE—MAINTENANCE ORDER—DISCHARGE BY MISCONDUCT—PAYMENT OF ARREARS ENFORCED—SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895 (58 & 59 Vict., c. 39), ss. 6, 9.

Where a maintenance order was discharged by the misconduct of the wife, she was held to be entitled to recover arrears under the order which had fallen due prior to the discharge.

Case stated by the justices for the County of Surrey. The respondent, Mrs. Alice Outerbridge, obtained on the 15th April, 1915, a maintenance order against her husband, the appellant, under s. 5 of the Summary Jurisdiction (Married Women) Act, 1895. Until varied or discharged the order was for £2 per week. On the 14th February, 1924, the respondent applied for committal of the appellant for failing to comply with the order; at that date the arrears amounted to £390. This application was not then dealt with, owing to the maintenance order being discharged on that day on proof of the respondent's misconduct. The adjourned summons was heard on the 21st January, 1926, and the appellant was ordered to pay the arrears by weekly instalments of £2, and his income was attached under s. 2 of the Affiliation Orders Act, 1914, and s. 9 of the Summary Jurisdiction (Married Women) Act, 1895, in satisfaction of the sum due to the respondent. The appellant applied for the case to be stated. Counsel for the appellant submitted that the maintenance order having been discharged on the 14th February, 1924, no further order for the payment of the money could be made. He referred to s. 6 of the Summary

Jurisdiction (Married Women) Act, 1895. Counsel for the respondent contended that this section did not apply to an order for payment of arrears which were due before the maintenance order was discharged. He referred to *Ruther v. Ruther* [1903], 2 K.B. 270; 47 Sol. J., 640.

Lord HEWART, C.J., dismissing the appeal said the question arising was whether the justices acted within their jurisdiction. It was contended that because the original maintenance order was discharged, the justices had no authority to make the order they did, and that it was contrary to s. 6 of the Summary Jurisdiction (Married Women) Act, 1895. It was said for the respondent that by s. 9 of the Act the payment may be enforced in the same manner as an order of affiliation. His lordship referred to *Ruther v. Ruther* [1903], 2 K.B. 270, which clearly laid down that a wife was entitled to arrears under a maintenance order up to the date of discharge or proof of misconduct. There was the clearest possible distinction between the statute under which the order was made and the statute under which the order to enforce it was made.

COUNSEL: For the appellant, *W. Orr*; for the respondent, *J. D. Young*.

SOLICITORS: *C. T. Lewis; Cardew, Smith & Ross.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Societies.

### The Medico-Legal Society.

An ordinary meeting of the above Society will be held at 11, Chandos Street, Cavendish Square, W.1, on Thursday, the 2nd December, 1926, at 8.30 p.m., when a paper will be read by Professor Harvey Littlejohn and Dr. Douglas Kerr on "Monoxide Poisoning—Its Increasing Medico-Legal Importance," which will be followed by a discussion.

The annual dinner of the Society will be held at the Holborn Restaurant on Friday, 10th December, at 7 for 7.15 p.m., when the President (The Right Hon. Lord Justice Atkin) will be in the chair. Tickets (14s. 6d. each, exclusive of wines) may be obtained from the Hon. Secretary, Mr. Ernest Goddard, 3, South Square, Gray's Inn.

### Law Association.

The usual monthly meeting of the Directors was held at The Law Society's Hall on Thursday, the 4th inst., Mr. J. R. H. Molony in the chair. The other Directors present were Messrs. J. D. Arthur, H. B. Curwen, P. E. Marshall, A. E. Pridham, J. E. W. Rider, John Venning, William Winterbottom, and the Secretary (Mr. E. E. Barron). A sum of £224 was voted in relief of deserving applicants, and other general business transacted.

### United Law Society.

A meeting of the Society was held in the Middle Temple Common Room, on Monday, 8th inst., Mr. F. W. Yates in the chair.

Mr. W. G. Galbraith moved: "That this House deplores the influence of Officers Training Corps and Territorial Regiments."

Mr. H. W. Pritchard opposed. There also spoke Col. Ashley, Messrs. G. B. Burke, H. S. Wood Smith, S. E. Redfern, E. H. Pearce, F. B. Guedalla, G. W. Tookey and J. Macmillan. The opener having replied, the motion was put to the meeting, but was lost by five votes.

### Grand Day at the Inner Temple.

The Treasurer (Sir Francis Taylor) and the Masters of the Bench of the Inner Temple entertained at dinner on Wednesday, being the Grand Day of Michaelmas Term, the following guests: The Archbishop of Canterbury, the Marquess of Londonderry, Lord Eustace Percy, Lord Rayleigh, Lord Hardinge of Penshurst, Lord Blanesburgh, Mr. Amery, Sir Francis Bell, Sir Lawrence Jones, Field-Marshal Sir William Robertson, Mr. Ernest Lapointe, Mr. J. G. Latham, Mr. W. J. Higgins, Mr. A. B. Morine, Sir Charles Longmore, Sir Roger Gregory, the Master of the Temple, the Warden of All Souls, Professor W. H. Perkin, Dr. Geoffrey Evans, Mr. H. A. Gwynne, Mr. D. Du Bois Davidson, and the Rev. the Reader.

The following Masters of the Bench were present: Sir Arthur M. Channell, Lord Darling, Mr. W. R. Bousfield, Lord Justice Bankes, Mr. R. F. MacSwiney, the Earl of Desart, Judge Atherley-Jones, Mr. Justice Rowlatt, Mr. Justice Avory, Lord Sumner, Sir John Simon, Viscount Cecil, Sir Ernest Moon, the Lord Chancellor, Mr. E. W. Hansell, Mr. A. M. Langdon, the Master of the Rolls, Judge Bairstow, the Lord Chief Justice, Mr. J. C. Priestley, Mr. Alexander Grant, Sir Leslie Scott, Mr. A. A. Hudson, Mr. T. Hollis Walker, Mr. Justice Bateson, Mr. W. B. Clode, Mr. G. Thorn Drury, Mr. F. P. M. Schiller, Mr. Ernest B. Charles, Mr. Justice MacKinnon, Mr. Justice Wright, Mr. E. E. Charteris, Mr. G. F. L. Mortimer, Mr. H. P. Macmillan, Mr. Daniel Stephens, Mr. Eustace G. Hills, Mr. W. A. Greene, Mr. R. F. Bayford and Mr. C. M. Pitman.

## Law Students' Journal.

### Law Students' Debating Society.

A meeting of the above Society was held at the Law Society's Hall, on Tuesday, 9th day of November, 1926 (Chairman, Mr. W. S. Jones), when the subject for debate was: "That in the opinion of this House the case of *Bennett v. L. and W. Whitehead, Limited*, 1926, 2 K.B. 380, was wrongly decided." Mr. V. R. Aronson opened, and Mr. A. S. Diamond in the affirmative, whilst Mr. C. F. S. Spurrell moved the negative, supported by Mr. J. F. Riordan. The following members, viz.: Messrs. E. G. M. Fletcher, M. C. Batten, and J. Chadwick, having spoken, and the opener having replied, the Chairman summed up, when the motion, on being put was lost by six votes. There were twenty members and three visitors present.

## Rules and Orders.

THE TOWN PLANNING (COMPULSORY PURCHASE)\* REGULATIONS, 1926, DATED SEPTEMBER 23, 1926, MADE BY THE MINISTER OF HEALTH UNDER THE TOWN PLANNING ACT, 1925 (15 GEO. 5, c. 16).

71,322.

The Minister of Health, in pursuance of the powers conferred on him by the Town Planning Act, 1925, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

1. These Regulations may be cited as the Town Planning (Compulsory Purchase) Regulations, 1926, and shall come into operation on the date hereof.

2. (1) In these Regulations, unless the context otherwise requires—

"The Minister" means the Minister of Health;

"The Act" means the Town Planning Act, 1925.

(2) The Interpretation Act, 1889, 52-3 V. c. 63, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

3. An Order made by a Local Authority under Part I of the Third Schedule to the Act (hereinafter referred to as "the Compulsory Order") shall be in the form set forth in the Schedule hereto, or in a form substantially to the like effect.

4. (1) Before submitting the Compulsory Order to the Minister for confirmation, the Local Authority shall cause the same to be published by advertisement in two successive weeks in one or more of the local newspapers circulating in the District of the Local Authority and in the Parish or Parishes in which the land to which the Compulsory Order relates is situated.

(2) The advertisements shall be headed respectively "First Advertisement" and "Second and Last Advertisement," and the first of the said advertisements shall be published not later than the seventh day after the making of the Compulsory Order.

(3) Each of the said advertisements shall contain in addition to a copy of the Compulsory Order a notice setting out the following particulars:—

(a) a statement that any objection to the Compulsory Order must be presented to the Minister within the period of fourteen days from and after the date of the publication of the first advertisement; and

(b) a statement of the period, times, and place or places during and at which the deposited plan referred to in the Schedule to the Compulsory Order may be inspected by or on behalf of any person interested in the land to which the Compulsory Order relates.

(4) The plan referred to in the Schedule to the Compulsory Order shall be deposited by the Local Authority not later than the seventh day after the making of the Compulsory Order at a place convenient for the purposes of inspection, and shall be kept deposited thereat for a period not being less than fourteen days from the date of the publication of the first advertisement; and the said plan shall be open for inspection by any person interested or affected, without payment of any fee, at all reasonable hours on any week-day during the said period. The Local Authority shall also make suitable provision for affording to any such person inspecting the said plan any necessary explanation or information in regard thereto.

(5) Notwithstanding anything contained in this Article, where the land to which the Compulsory Order relates is situated within a rural district and does not exceed five acres in extent, the said Order shall be deemed to have been sufficiently published if not later than the seventh day after the making of the said Order one copy thereof has been affixed to the land in some conspicuous position and a further copy to a notice board outside the offices of the Local Authority each of the said copies having appended to it a notice setting out the particulars specified in paragraph (3) of this Article, and for this purpose the date on which the said notices are so affixed shall be treated as the date of the publication of the first advertisement.

5. (1) The Local Authority shall, not later than the seventh day after the making of the Compulsory Order, cause notice thereof to be given to every owner, lessee, and occupier of the land to which the Compulsory Order relates, and every such notice shall include a copy of the Compulsory Order, to which shall be appended a notice containing the particulars mentioned in paragraph (3) of Article 4 of these Regulations.

(2) The Local Authority shall furnish a copy of the Compulsory Order, free of charge, to any person interested in the land to which the Compulsory Order relates, upon his applying for the same.

6. The period within which an objection to a Compulsory Order may be presented to the Minister by a person interested in the land to which the Compulsory Order relates shall be the period of fourteen days from and after the date of the publication of the first advertisement of the Compulsory Order.

7.—(1) The Local Authority shall as soon as practicable after the confirmation of the Compulsory Order cause a copy of the Compulsory Order as confirmed to be served on every owner, lessee, and occupier of the land to which the Compulsory Order relates.

(2) A copy of the Compulsory Order as confirmed shall be furnished free of charge by the Local Authority to any person interested in the land authorised to be purchased upon his applying for the same, and a copy of any plan to which reference is made in the Compulsory Order as confirmed shall also be furnished by the Local Authority to any such person upon his applying for such copy and paying the reasonable cost of preparing the same.

### SCHEDULE.

#### THE TOWN, PLANNING ACT, 1925.

#### ORDER FOR THE PURPOSE OF THE COMPULSORY ACQUISITION OF LANDS.

The<sup>1</sup> hereby make the following Order:—

1. The provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement are, subject as hereinafter provided, hereby put in force as respects the purchase by the<sup>2</sup> of the lands described in the Schedule hereto for the purposes of the<sup>3</sup> Town Planning Scheme.

2. The Lands Clauses Acts (except Section 127 of the Lands Clauses Consolidation Act, 1845), as modified, varied or amended by Part I of the Third Schedule of the Town Planning Act, 1925, the Acquisition of Land (Assessment of Compensation) Act, 1919, and Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, are, subject to the necessary adaptations, incorporated with this Order, and the provisions of those Acts shall apply accordingly.

3<sup>4</sup>. The sums agreed upon or awarded for the purchase of the lands described in the Schedule to this Order, being glebe land or other land belonging to an ecclesiastical benefice, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting any such land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them

<sup>1</sup> Here insert title of the Authority making the Order.

<sup>2</sup> Insert title of town planning scheme.

<sup>3</sup> Insert this Article where the lands described in the Schedule to the Order include glebe land or other land belonging to an ecclesiastical benefice.

<sup>4</sup> For restrictions on acquisition of certain lands see Section 8 sub-section (6) and Part II of the Third Schedule of the Town Planning Act, 1925.

upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

[3.] This Order shall come into operation as from the date of its confirmation by the Minister of Health.

[4.] This Order may be cited as the<sup>4</sup> Order 19.

THE SCHEDULE above referred to.

| Numbers on Plan deposited at the Offices of the <sup>5</sup> | Quantity Description and Situation of the Lands. | Owners or reputed Owners. | Lessors or reputed Lessors. | Occupiers. |
|--|--|---------------------------|-----------------------------|------------|
|  |  |                           |                             |            |

Given under the Seal of the<sup>5</sup> this day of 19 .

L.S.

Given under the Official Seal of the Minister of Health this twenty-third day of September, in the year One thousand nine hundred and twenty-six.

(L.S.) A. B. MacLachlan,  
Assistant Secretary, Ministry of Health.

<sup>4</sup> Here insert a suitable short title which should include the title of the relevant town planning scheme.  
<sup>5</sup> Here insert title of the Authority making the Order.

# THE STATUTORY WILL FORMS, 1925. DATED AUGUST 7, 1925.

I, George Viscount Cave, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 179 of the Law of Property Act, 1925, and every other power enabling me in that behalf, hereby prescribe and publish the forms hereinafter contained as forms to which a testator may refer in his will and give the following directions as to the manner of reference.

Dated the 7th day of August, 1925.

Cave, C.

NOTE.—These forms are intended to apply only in the case of wills taking effect on or after the 1st day of January, 1926.

## STATUTORY WILL FORMS.

1. *Short title.*—The forms hereinafter contained may be cited as the Statutory Will Forms, 1925, and are divided into two groups called Part I. and Part II. respectively.

2. *Manner of Application.*—The Forms in Part I. may be incorporated in a will by a general reference to that Part, and the Forms in Part I. and Part II. or any of them may be incorporated in a will in manner indicated in the Schedule hereto or in any other manner indicating an intention to incorporate them, and in the case of Forms in Part II. also indicating what property or disposition is to be affected thereby.

3. *Interpretation.*—(1) In any form when incorporated in a will—

(i) The provisions thereof shall have effect subject to the express provisions of the will;

(ii) "Disposition" means a devise, bequest, and a testamentary appointment, whether in exercise of a general or special power, and includes a disposition under the statutory power to dispose of entailed interests by will; "dispose of" has a corresponding meaning; and references to a testator's property include property which he disposes of in exercise of a power;

(iii) "The trustees" mean the trustees appointed by the testator either generally or for a specific purpose, as the case may require, and the persons who by appointment by the court or otherwise become the trustees, and include his personal representatives, when acting as his trustees;

(iv) "Authorised investments" mean investments authorised by the will creating the trust, for the investment of any money subject to the trusts of the will, or by law.

(v) Other words and expressions have the same meanings as in the Law of Property Act, 1925.

## FORMS.

### PART I.

FORMS WHICH MAY BE APPLIED EITHER GENERALLY OR BY SPECIFIC REFERENCE.

#### Form 1.

*Confirmation of settlements.*—I confirm every settlement of property made by me which is subsisting at my death, and subject to any express provision to the contrary in my will, the provisions made by my will for the benefit of persons

beneficially interested under any such settlement, shall be in addition to, and not in satisfaction of, those made, or covenanted to be made by me in such settlement.

#### Form 2.

*Meaning of "personal chattels."*—(1) "personal chattels" shall mean "carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament (including wearing apparel), also musical and scientific instruments and apparatus, wines, liquors and consumable stores, but shall not include any chattels used at my death for business purposes, nor money or securities for money."

(2) But a general disposition of personal chattels shall take effect subject to any specific disposition.

#### Form 3.

*Inventories and provisions respecting chattels.*—(1) An inventory of chattels given by my will, otherwise than by way of absolute gift, shall be made in duplicate, one part shall be retained by the trustees and the other part shall be delivered to the person of full age for the time being entitled to the use or possession of the chattels, in this clause called the "usufructuary."

(2) A receipt shall be signed by the usufructuary, at the foot of the inventory retained by the trustees.

(3) The inventory delivered to the usufructuary shall, if he so requires, be signed at the foot thereof by the trustees.

(4) On any change of the right to the use or possession of the chattels, a new receipt shall be signed by the usufructuary at the foot of the inventory retained by the trustees.

(5) Where, by reason of the exercise of any power to sell, exchange, purchase, alter the fashion of, or otherwise deal with the chattels, or of any destruction or loss of any chattel, the inventories become inaccurate, the inventories shall be altered and re-signed, or new inventories shall, if convenient, be made and signed.

(6) The trustees may, at their discretion, exclude from an inventory, any chattels which, by reason of their trifling value or wearing out nature, they may consider ought to be so excluded.

(7) Where the chattels have been delivered to the usufructuary and a receipt is given therefor, the trustees, so long as the usufructuary remains entitled to the use of the chattels, shall not be liable in any way—

(a) for any unauthorised disposition thereof or dealing therewith,

(b) to see to the insurance (so far as the same are capable of being insured), repair, or safe custody of the chattels, unless and until required, in writing, to insure the chattels or to take any proceedings in reference thereto, by some person beneficially interested in the chattels or by his guardian, committee or receiver, and unless also due provision be made, to the satisfaction of the trustees, for the payment of the costs of insurance or of any proceedings required to be taken.

(8) Where there is no person of full age and capacity entitled to the use of the chattels, the trustees may, during the period of disability, make such arrangements for the safe custody, repair, insurance and use of the chattels as, having regard to the circumstances of the case, they may in their absolute discretion, think expedient.

#### Form 4.

*Legacies to charities.*—The receipt of the treasurer or other proper officer of a charitable benevolent or philanthropic institution, society or body of persons (corporate or incorporate), to which a legacy is given by my will shall be a complete discharge of my personal representatives.

#### Form 5.

*Directions respecting annuities.*—The following provisions shall have effect in regard to any annuities or annuity given by my will—

(1) The trustees may, and (if so requested by or on behalf of any person beneficially interested in the property affected), shall, as soon as may be after any annuity commences to accrue, set apart in their names or under their control authorised investments to provide a fund the income whereof will be sufficient, in the opinion of the trustees, to produce an annual sum equal to the amount of the annuities for the time being payable under my will.

(2) The income or, if necessary, the capital of the fund so appropriated, shall be applied in payment of every subsisting annuity.

(3) Until a fund shall be so appropriated, my residuary estate shall stand charged with the payment of every subsisting annuity, but, after appropriation, the said estate shall be thereby discharged therefrom.

(4) The appropriated fund, or, where more than one annuity is bequeathed, such parts thereof as, in the opinion of the trustees, may not be required to answer any subsisting annuity, shall, on the ceasing of an annuity, fall into my residuary personal estate.

(5) Accordingly, as each annuity ceases, the trustees may treat as part of my residuary estate, the whole or a corresponding part of the appropriated fund, as the case may require, retaining only such part thereof (if any) as may, from time to time in their opinion, be sufficient to produce, by the income thereof, an annual sum equal to the amount of any subsisting annuities.

(6) Any surplus income of the appropriated fund shall be applied in the same manner as the income of my residuary personal estate.

(7) The trustees may, at their discretion, vary any of the investments for the time being representing the appropriated fund for other authorised investments.

(8) In this clause "annuity" includes any periodical payment (not being a rentcharge) for life or other terminable interest.

#### Form 6.

**Power of appropriation.**—(1) The power of appropriation conferred by the Administration of Estates Act, 1925, shall be exercisable by the trustees, without any of the consents made requisite by that Act.

(2) So far as practicable, the trustees shall give one month's notice, at least, of an intended appropriation, to the persons whose consent would, but for this clause, be required under that Act; but a purchaser shall not be concerned to see or inquire whether any such notices have been given.

(3) In this clause "trustees" includes my personal representatives.

#### PART II.

#### FORMS WHICH CAN ONLY BE APPLIED BY SPECIFIC REFERENCE.

##### Form 7.

**Trusts of a settled legacy.**—Any legacy of money or investments to which this clause is applied shall be subject to the following provisions:—

(1) The trustees shall stand possessed of the legacy upon trust to invest the same in their names or under their control in any authorised investments, with power, at the like discretion, to vary the investments thereof for others of a like nature.

(2) The trustees shall stand possessed of the legacy, and of the investments representing the same and all statutory accumulations, if any, of income thereof, hereinafter included in the description of such legacy upon trust to pay the income thereof to the legatee during the life of the legatee.

(3) After the death of the legatee, the capital and income of the legacy shall be held—

In trust for all or any one or more exclusively of the other or others, of the issue of the legatee, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement, and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as the legatee shall, by deed, revocable or irrevocable, or by will appoint; but so that, under any appointment a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

And in default of and until and subject to any such appointment—

In trust for all or any the children or child of the legatee, who attain the age of twenty-one years, or marry under that age, and if more than one in equal shares.

(4) Any child of the legatee, who, or whose issue, takes any part of the legacy under any appointment by the legatee, shall not, in the absence of any direction by the legatee to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or his issue into hotchpot and accounting for the same accordingly.

(5) If the legatee shall not have any child who, under the trusts in default of appointment hereinbefore contained, attains a vested interest in the legacy, then, subject to the trusts and powers hereinbefore expressed in favour of the legatee and his issue, the legacy and the income thereof and all statutory accumulations, if any, of income shall fall into and form part of my residuary personal estate.

(6) The legatee may, notwithstanding any of the trusts hereinbefore expressed concerning his legacy, from time to time or at any time by deed, revocable or irrevocable,

or by will, appoint to or for the benefit of any spouse who may survive the legatee, during the residue of the life of such spouse or for any less period (and subject or not to any conditions, and with such gifts over, and discretionary or other trusts for the benefit of the spouse and issue of the legatee, as the legatee may think fit), all or any part of the annual income of the legacy of the legatee, or of so much thereof as shall not, before the death of the legatee, have been paid or applied under any power affecting the same.

And, upon any such appointment, the trusts and powers limited to take effect after the death of the legatee, shall take effect subject to the interest limited by any such appointment:

Provided that the power last aforesaid, to appoint by deed, shall not be exercisable by a woman while under coverture.

#### Form 8.

**Administration trusts.**—Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions:—

(1) The property shall be held—

(a) as to the real property, if any, including chattels real, upon trust to sell the same, and

(b) as to the personal property, if any, upon trust to call in, sell, and convert into money such part thereof as may not consist of money.

(2) The trustee shall have power to postpone such sale and conversion for such a period as they, without being liable to account may think proper.

(3) A reversionary interest shall not be sold, until it falls into possession, unless the trustees see special reason for sale.

(4) The trustees shall out of the net money to arise from the sale and conversion of the property (after payment of costs, and out of any ready money of mine, included in the disposition, pay or provide for

(a) my funeral and testamentary expenses;

(b) my debts, except charges on other property of mine so far as those charges are discharged out of the property primarily charged therewith under the Administration of Estates Act, 1925;

(c) the duties, payable out of capital on my death, and not charged on or primarily payable out of other property;

(d) any other liabilities properly payable out of the property, or the proceeds of sale thereof;

(e) the legacies (including money directed to be paid by my will), and annuities bequeathed by me, but so that all legacies and annuities, and the duty on all legacies and annuities bequeathed free of duty, shall be paid primarily out of personal property, if any, included in the disposition.

(5) The trustees may invest, in their names or under their control, the residue of the said money, or so much thereof as may not have been distributed, in any authorised investments, with power, at their discretion, to vary such investments for others of a like nature.

(6) The income (including net rents and profits of real property and chattels real, after payment of rates, taxes, rent, costs of insurance and of repairs and other outgoings properly attributable to income) of so much of the property as is not required for the administration purposes aforesaid, shall, however the property is invested, as from my death, be treated and applied as income; and for that purpose any necessary apportionment may be made between capital and income.

(7) Provided that—

(a) statutory accumulations of income made during a minority, or pending a contingency, or accumulations made under an express trust for accumulation, may be added to capital;

(b) income may be applied in effecting and maintaining a leasehold sinking fund policy, or may be set aside and invested for providing a fund to answer any liabilities which in the opinion of the trustees ought to be borne by income;

(c) the trustees may in their discretion adjust, in such manner as they shall think fit, having regard to the circumstances of the case, the incidence, as between capital and income, of the payments made in due course of administration.

#### Form 9.

**Trusts for spouse for life with power to appoint to issue and gift over to them.**—Any property disposed of by my will (otherwise than in exercise of a special power) to which

this clause is applied shall be subject to the following provisions:—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse, the capital and income of the property shall be held—

(i) In trust for all or any one or more, exclusively of the other or others, of my issue, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as my spouse shall, by deed, revocable or irrevocable, or by will, appoint; but so that, under any appointment, a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

(ii) And in default of and until and subject to any such appointment in trust, in equal shares if more than one, for all or any my children or child who survive me and attain the age of twenty-one years or marry under that age, and for all or any of the issue living at my death who attain the age of twenty-one years or marry under that age of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share or shares which his or their parent would have taken if living at my death, and so that no issue shall take whose parent is living at my death and so capable of taking.

(3) Any person who, or whose issue, takes any part of the property, under any appointment by my spouse, shall not, in the absence of any direction by my spouse to the contrary, take any share in the unappointed part, without bringing the shares appointed to such person or his issue into hotchpot, and accounting for the same accordingly.

#### Form 10.

*Trusts for spouse and issue, without a power of appointment.*—Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions:—

(1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.

(2) After the death of my spouse the capital and income of the property shall be held in trust, in equal shares if more than one, for all or any my children or child, who survive me and attain the age of twenty-one years or marry under age, and for all or any of the issue living at my death, who attain the age of twenty-one years or marry under that age, of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares, if more than one, the share or shares which his or their parent would have taken if living at my death; and so that no issue shall take whose parent is living at my death and so capable of taking.

#### Schedule.

##### INCORPORATION OF ALL THE FORMS IN PART I.

All the forms contained in Part I of the Statutory Will Forms, 1925, are incorporated in my will [subject to the following modifications, namely\*].

\* Here insert the modifications (if any).

##### INCORPORATION OF SPECIFIED FORMS FROM PART I.

The following forms contained in Part I of the Statutory Will Forms, 1925, shall be incorporated in my will:—

[Specify those of the following forms which it is desired to incorporate.]

Form 1 (Confirmation of Settlements).

Form 2 (Meaning of "personal chattels").

Form 3 (Inventories and provisions respecting chattels).

Form 4 (Legacies to charities).

Form 5 (Directions respecting annuities).

Form 6 (Power of appropriation).

[Subject to the following modifications, namely\*].

\* Here insert the modifications (if any).

##### INCORPORATION OF SPECIFIED FORMS FROM PART II.

#### Form 7.

*Trusts of a Settled Legacy.*—Form 7 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to the following legacies† [subject to the following modifications†].

\* Here insert the legacies of money or investments to be settled.

† Here insert the modifications (if any).

#### Form 8.

*Administration Trusts.*—Form 8 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to\* [subject to the following modifications†].

\* Here insert description of property to be held upon administration trusts.  
† Here insert the modifications (if any).

#### Form 9.

*Trusts for Spouse for life with power to appoint to issue and gift over to them.*—Form 9 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to\* [subject to the following modifications†].

\* Here insert description of the property to be held on trusts for spouse for life with power to appoint to issue and gift over to them.  
† Here insert the modifications (if any).

#### Form 10.

*Trusts for Spouse and issue without a power of appointment.*—Form 10 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to\* [subject to the following modifications†].

\* Here insert description of the property to be held on trusts for spouse and issue without power of appointment.  
† Here insert the modifications (if any).

## Legal Notes and News.

### Appointments.

Mr. C. E. E. JENKINS, K.C., has been elected Treasurer of Lincoln's Inn for the ensuing year. Mr. Jenkins was called to the Bar in 1885 and took silk in 1897.

Mr. R. H. FURNESS, Solicitor-General of Trinidad, who has been appointed Chief Justice of Barbados, after being admitted a Solicitor went out to practise in British Honduras and shortly afterwards entered the Colonial Service. During the war he served both in France and Egypt, and was called by Lincoln's Inn in 1919, being at that time still in the colonial service. He was later sent to Tanganyika as a Resident Magistrate, being subsequently promoted Solicitor-General of Trinidad.

Mr. WILFRED ARTHUR GREENE, K.C., has been appointed standing Counsel to the University of Oxford. Mr. Greene obtained the Craven, Hertford, and Vinerian Scholarships, was called by the Inner Temple in 1908, and took silk in 1922.

Mr. GEORGE ALBERT BONNER, one of the Masters of the Supreme Court, has been appointed King's Remembrancer and Chief Master in the place of Sir T. Willes Chitty, retired. Master Bonner was called to the Bar in 1885.

Mr. THOMAS M. WRIGHT, Assistant Solicitor in the office of Sir William E. Hart, Town Clerk of the City and County Borough of Sheffield, has been appointed Assistant Solicitor in the office of Mr. Herbert Lee, Town Clerk of the County Borough of Walsall. Mr. Wright was educated at King Edward VII School, Sheffield and Sheffield University, where he obtained the degree of LL.M. He was articled to Sir William Hart in 1921, and admitted in 1924.

Mr. ROBERT MARQUIS, Solicitor, Crook, has been appointed Clerk to the Crook Urban District Council. Mr. Marquis was admitted in 1898.

Mr. EDWIN T. PARKHOUSE, Solicitor, has been appointed a Commissioner to administer oaths in the Supreme Court. Mr. Parkhouse was admitted in 1920.

Mr. F. WEBB, Assistant Clerk to the East Ashford Rural District Council and Board of Guardians, has been promoted to the clerkship in succession to Mr. Julius Kingford, who is retiring.

### Partnerships Dissolved.

FREDERICK WILLIAM BROWN, ARTHUR QUAYLE and FREDERICK BENTLEY TURNER, solicitors, Southport, and 3 and 4, Clement's Inn (Brown, Quayle & Bentley Turner), by mutual consent as from 28th August. The business will be carried on in future by F. W. Brown, F. B. Turner, Bernard Compton Carr and John Francis Harvey Templer at the above addresses under the style of Brown, Turner, Compton Carr & Co.

HORACE GILDON HARWOOD, ROBERT CLERMONT WITT, CHARLES MACKINTOSH, JULIAN GEORGE LOUSADA, PERCIVAL CHARLES FAWCETT, APPELBE CHISHOLM ADAMS and VILLIERS FREDERICK CESAR HAWKINS, solicitors, 16 Old Broad-street (Stephenson, Harwood & Tatham), by mutual consent as from 31st October, so far as concerns A. C. Adams, who retires from the firm. The business will be carried on in future by H. G. Harwood, R. C. Witt, C. Mackintosh, J. G. Lousada, P. C. Fawcett and V. F. C. Hawkins.

ERNEST O. WOOLER and BENJAMIN B. BURROWS, solicitors (E. O. Wooller & Burrows), Leeds, by mutual consent as from 1st January, 1922, from which date the practice has been, and will continue to be, carried on by B. B. Burrows on his own account under the name of E. O. Wooller & Burrows, Leeds.

### THE BENCH AND BAR.

At the Lord Mayor's Banquet on Tuesday last Mr. Sheriff VINCENT submitted "The Judges and the Bar of England." He said the administration of justice in our courts would always be a marvel of the whole realm.

Lord HEWART, responding, said that human nature being human nature, there was never wanting a due supply of causes, civil and criminal, to be determined by the High Court, and especially perhaps of those causes which arose from collisions between two stationary motor-cars, each on its proper side of the road and each keeping a good look-out. (Laughter.) In general, as he understood, the suitor was not dissatisfied with the judgment—or, at any rate, he had had enough of it. In cases of serious dissatisfaction he did not, as a rule, throw stones at the judge. Rather, he adopted the milder and more tranquil course of appealing to the Court of Appeal. There the judgment, if it was wrong, and still more, if it was thought to be wrong, might be reversed. Even the judgments of the Court of Appeal could be taken to the House of Lords. There the judgment was always right, because it could not be reversed. (Laughter.) If in spite of, or because of, its correctness, it was gravely inconvenient, it could be turned upside down and inside out by legislation. Such was our admirable system, the envy of less favoured nations, and it produced that spirit of public contentment which caused law and lawyers to be regarded with so much affection. (Laughter.) His distinguished colleagues in all divisions of the High Court were, most rightly, very difficult to please. But they were quite satisfied with the admiration in which they were universally held. On their behalf he returned thanks for the kind way in which the toast was proposed and for the marked composure with which it had been received. (Laughter and cheers.)

Sir THOMAS INSKIP, Solicitor-General, replying on behalf of the Bar, said: "The members of the Bar are sensible of the high honour paid them by their inclusion in the toast on this occasion. The profession, I suppose, owes its honour to the fact that a great part of the law in which the City of London is interested was hammered out in the precincts of this historic hall. The profession is supposed by some persons to be not altogether oblivious to the emoluments which on some occasions it receives. (Laughter.) However that may be, I think I may say on behalf of the Bar, and particularly of the junior members, that they show great readiness on all occasions to offer their services without hope of reward, public or private, on behalf of poor litigants. I think it not out of place to pay tribute to the readiness with which they give their services, and to express the hope that an extension of the system of help for poor prisoners should be deemed desirable." (Cheers.)

### Court Papers.

#### Supreme Court of Judicature.

| Date.          | ROTA OF REGISTRARS IN ATTENDANCE ON |                       |                      |                     |
|----------------|-------------------------------------|-----------------------|----------------------|---------------------|
|                | EMERGENCY ROTA.                     | APPEAL COURT No. 1.   | MR. JUSTICE EVE.     | MR. JUSTICE ROMER.  |
| M'nd'y Nov. 15 | Mr. Jolly                           | Mr. Bloxam            | Mr. Ritchie          | Mr. Syngé           |
| Tuesday .. 16  | More                                | Hicks Beach           | Syngé                | Ritchie             |
| Wednesday 17   | Syngé                               | Jolly                 | Ritchie              | Syngé               |
| Thursday .. 18 | Ritchie                             | More                  | Syngé                | Ritchie             |
| Friday .. 19   | Bloxam                              | Syngé                 | Ritchie              | Syngé               |
| Saturday .. 20 | Hicks Beach                         | Ritchie               | Syngé                | Ritchie             |
|                | MR. JUSTICE ASTBURY.                | MR. JUSTICE LAWRENCE. | MR. JUSTICE RUSSELL. | MR. JUSTICE TOMLIN. |
| M'nd'y Nov. 15 | Mr. Jolly                           | Mr. More              | Mr. Hicks Beach      | Mr. Bloxam          |
| Tuesday .. 16  | More                                | Jolly                 | Bloxam               | Hicks Beach         |
| Wednesday 17   | Jolly                               | More                  | Hicks Beach          | Bloxam              |
| Thursday .. 18 | More                                | Jolly                 | Bloxam               | Hicks Beach         |
| Friday .. 19   | Jolly                               | More                  | Hicks Beach          | Bloxam              |
| Saturday .. 20 | More                                | Jolly                 | Bloxam               | Hicks Beach         |

**VALUATIONS FOR INSURANCE.**—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **GERENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert Valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

#### THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

### Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 25th November, 1926.

|  | MIDDLE PRICE 10th Nov. | INTEREST YIELD. | YIELD WITH REDEMPTION. |
|--|------------------------|-----------------|------------------------|
| <b>English Government Securities.</b>  |                        |                 |                        |
| Consols 2½%  | 54½                    | 4 12 0          | —                      |
| War Loan 6% 1929-47 .. .. .  | 99½                    | 5 0 6           | 5 0 6                  |
| War Loan 4½% 1925-45 .. .. .   | 93½                    | 4 16 0          | 5 0 0                  |
| War Loan 4% (Tax free) 1929-42 ..  | 100½                   | 4 0 0           | 4 0 0                  |
| War Loan 3½% 1st March 1928 ..   | 98½                    | 3 11 6          | 4 18 0                 |
| Funding 4% Loan 1960-90 .. ..  | 84½                    | 4 14 6          | 4 15 6                 |
| Victory 4% Bonds (available for Estate Duty at par) Average life 35 years .. | 92                     | 4 7 0           | 4 9 0                  |
| Conversion 4½% Loan 1940-44 ..   | 95½                    | 4 15 0          | 4 19 0                 |
| Conversion 3½% Loan 1961 .. ..   | 74½                    | 4 14 0          | —                      |
| Local Loans 3% Stock 1921 or after ..  | 62½                    | 4 16 0          | —                      |
| Bank Stock .. .. .   | 245½                   | 4 17 6          | —                      |
| India 4½% 1950-55 .. .. .  | 91½                    | 4 18 0          | 5 0 6                  |
| India 3½% .. .. .  | 69½                    | 5 1 0           | —                      |
| India 3% .. .. .   | 59½                    | 5 1 0           | —                      |
| Sudan 4½% 1939-73 .. .. .  | 93½                    | 4 16 0          | 5 0 0                  |
| Sudan 4% 1974 .. .. .  | 83½                    | 4 15 6          | 4 18 6                 |
| Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years) ..      | 79½                    | 3 15 6          | 4 14 0                 |
| <b>Colonial Securities.</b>  |                        |                 |                        |
| Canada 3% 1938 .. .. .   | 84                     | 3 11 6          | 4 19 0                 |
| Cape of Good Hope 4% 1916-36 ..  | 91½                    | 4 8 0           | 5 3 0                  |
| Cape of Good Hope 3½% 1929-49 ..   | 79½                    | 4 8 0           | 5 1 0                  |
| Commonwealth of Australia 5% 1945-75   | 98½                    | 5 1 6           | 5 3 0                  |
| Gold Coast 4½% 1956 .. .. .  | 95                     | 4 15 0          | 4 17 0                 |
| Jamaica 4½% 1941-71 .. .. .  | 91½                    | 4 18 6          | 5 0 0                  |
| Natal 4% 1937 .. .. .  | 91½                    | 4 7 0           | 4 19 0                 |
| New South Wales 4½% 1935-45 ..   | 88½                    | 5 1 6           | 5 10 0                 |
| New South Wales 5% 1945-65 ..  | 94½                    | 5 6 0           | 5 6 0                  |
| New Zealand 4½% 1945 .. .. .   | 95½                    | 4 14 6          | 4 18 0                 |
| New Zealand 4% 1929 .. .. .  | 96                     | 4 3 6           | 5 6 0                  |
| Queensland 5% 1940-60 .. .. .  | 95½                    | 5 5 0           | 5 5 6                  |
| South Africa 5% 1945-75 .. .. .  | 100½                   | 4 19 0          | 5 0 0                  |
| S. Australia 5% 1945-75 .. .. .  | 98                     | 5 2 0           | 5 4 0                  |
| Tasmania 5% 1932-42 .. .. .  | 98½                    | 5 1 6           | 5 2 6                  |
| Victoria 5% 1945-75 .. .. .  | 98½                    | 5 2 0           | 5 4 0                  |
| W. Australia 5% 1945-75 .. .. .  | 98                     | 5 2 0           | 5 3 6                  |
| <b>Corporation Stocks.</b>   |                        |                 |                        |
| Birmingham 3% on or after 1947 or at option of Corp'n. .. .. .               | 62½                    | 4 16 0          | —                      |
| Birmingham 5% 1946-56 .. .. .  | 100½                   | 4 19 0          | 4 19 6                 |
| Cardiff 5% 1945-65 .. .. .   | 100                    | 5 0 0           | 5 0 0                  |
| Croydon 3% 1940-60 .. .. .   | 66½                    | 4 10 6          | 5 2 0                  |
| Hull 3½% 1925-55 .. .. .   | 75½                    | 4 13 0          | 5 0 6                  |
| Liverpool 3½% on or after 1942 at option of Corp'n. .. .. .                  | 72½                    | 4 16 0          | —                      |
| Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corp'n. .. .. .              | 51½                    | 4 17 0          | —                      |
| Ldn. Cty. 3% Con. Stk. after 1920 at option of Corp'n. .. .. .               | 61½                    | 4 18 0          | —                      |
| Manchester 3% on or after 1941 .. ..   | 63                     | 4 15 6          | —                      |
| Metropolitan Water Board 3% 'A' 1963-2003 .. .. .                            | 61½                    | 4 17 6          | 4 18 0                 |
| Metropolitan Water Board 3% 'B' 1934-2003 .. .. .                            | 63                     | 4 15 6          | 4 17 0                 |
| Middlesex C. C. 3½% 1927-47 .. ..  | 80½                    | 4 7 0           | 4 19 6                 |
| Newcastle 3½% irredeemable .. ..   | 71½                    | 4 18 0          | —                      |
| Nottingham 3% irredeemable .. ..   | 61½                    | 4 17 6          | —                      |
| Stockton 5% 1946-66 .. .. .  | 100                    | 5 0 0           | 5 0 0                  |
| Wolverhampton 5% 1946-56 .. .. .   | 99½                    | 5 0 0           | 5 0 6                  |
| <b>English Railway Prior Charges.</b>  |                        |                 |                        |
| Gt. Western Rly. 4% Debenture .. ..  | 81½                    | 4 18 0          | —                      |
| Gt. Western Rly. 5% Rent Charge ..   | 99½                    | 5 0 6           | —                      |
| Gt. Western Rly. 5% Preference .. ..   | 93½                    | 5 7 0           | —                      |
| L. North Eastern Rly. 4% Debenture ..  | 76½                    | 5 4 0           | —                      |
| L. North Eastern Rly. 4% Guaranteed ..                                       | 72½                    | 5 10 0          | —                      |
| L. North Eastern Rly. 4% 1st Preference ..                                   | 65                     | 6 3 0           | —                      |
| L. Mid. & Scot. Rly. 4% Debenture ..   | 79½                    | 5 1 0           | —                      |
| L. Mid. & Scot. Rly. 4% Guaranteed ..  | 77½                    | 5 3 6           | —                      |
| L. Mid. & Scot. Rly. 4% Preference ..  | 71½                    | 5 12 0          | —                      |
| Southern Railway 4% Debenture .. ..  | 80½                    | 4 19 6          | —                      |
| Southern Railway 5% Guaranteed ..  | 98                     | 5 2 0           | —                      |
| Southern Railway 5% Preference .. ..   | 93½                    | 5 7 0           | —                      |

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